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LEVY MAYER

AND THE NEW INDUSTRIAL ERA

Levy Mayer

LEVY MAYER

AND THE NEW INDUSTRIAL ERA

A BIOGRAPHY

BY EDGAR LEE MASTERS

NEW HAVEN : 1927

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LEVY MAYER

CHAPTER I

FATHER AND MOTHER AND EARLY CHICAGO

LEVY MAYER was born in Richmond, Virginia, October 23, 1858, the sixth child of the thirteen children of Henry D. and Clara Goldschmidt Mayer, who were natives of Bavaria, Germany, and who had emigrated to the United States in 1855. Henry Mayer, according to the family tradition, was born in the village of Moenichroft, near Munich. Clara Goldschmidt was born in Oettingen, a town about fifty miles northwest of Ausburg and ninety miles northwest of Munich. At this time Bavaria was subject to all the strife and repression which characterized the breaking up of the Middle Ages and the final overthrow of feudalism. In 1799 only Catholics were authorized to hold public worship or to pursue an occupation. Non-conformists of all descriptions were severely dealt with; and discriminations were made against them with reference to rights in the courts and other equal liberties. There were also laws against their purchasing and holding real estate. This condition, descriptive of Bavaria, extended to most of the portions of western Europe. As a result of the enforcement of these severe regulations, there was a great emigration to the United States between the years 1850 and 1860, when hordes of people from all parts of Europe poured through

old system of master and man, when artisans carried on their trades with their own tools, in their own homes or in small shops. They sought to enforce the doctrine of *laissez faire* upon hundreds of men in great factories, dependent entirely upon their wages, which had a logical application only to laborers at their own shops, enjoying the leisure in which to attend to gardens and domestic interests. They attempted, in a word, to project into the new industrial age the principles which had governed the old domestic system. They insisted also that the government should not attempt to regulate the prices of goods or their quality, nor to interfere between employer and workman, except to protect either from violence; and that they should not fix the hours of work or regulate the conditions in the factories. They contended that prices would be kept down by competition among the manufacturers, and that wages would be fixed by the supply and demand of men; and that every one should have the fullest freedom to do what he was able to do. If he was a workman of ability, he would thrive; and if he was of inferior capacity, he could only hope to get the wages that the employer, consulting his own advantage, was willing to pay him. This principle of *laissez faire,* applied to the complex conditions of the new industrialism, has not yet ceased to be a source of confusion in economic thinking.

Although America in 1855 was rapidly entering into the new industrial era, and though the country was becoming more and more disturbed over political

hundred tons burden, using both sails and steam, was put into the Atlantic service. But, though the "Savannah" was followed by the "Sirus" and the "Great Western" steamships of the year 1840, and by the "Arctic," "Baltic," "Atlantic" and "Pacific" in 1850, and by others rapidly following, sailing vessels were still used in 1855. It happened that Henry Mayer took the journey to America in a sailing ship, and waited in New York for his wife Clara, who arrived in one of the steamers somewhat later in that year.

Clara Mayer had a married brother who lived in the city of Richmond; and so it was that, after sojourning in New York for some time, where another son was born, the couple went to the southern city to make their residence there, taking with them their children, among whom was David, who afterwards became one of the leading merchants of Chicago.

No doubt Dickens had spread the fame of Richmond through the publication of his *American Notes*. It was one of the old cities of America, for John Smith in 1607 had sailed up to an island opposite this city and planted a cross. It was established as a town by the Assembly of Virginia in 1742, and, being built on seven hills, took the reputation of the American Rome. Dickens had written of it that it was "delightfully situated on eight hills overhanging the James River, a sparkling stream studded here and there with bright islands, or brawling over broken rocks. There are pretty villas and cheerful houses on its streets and nature smiles upon the country

around." It had been the home of Chief Justice Marshall and many other American celebrities, and was distinguished as the place where Aaron Burr was tried for treason, when many of the great lawyers of America were present and took part, for or against him; and where Andrew Jackson had come from Tennessee to give Burr the support of his friendship and influence. In 1830 it had 7,755 whites, 6,345 slaves and 1,960 free negroes. In 1836 the first railway train steamed out of Richmond with six passenger cars and one baggage car. In the same year there was an insurrection of slaves and the political quarrel between the Democrats and Whigs was hot and bitter. Iron works and rolling mills had been established in Richmond as early as 1839, making cannon at first and later locomotives. In 1853 the town was visited by Thackeray. During the war between the States, it became the center of the conflict between the North and South, with Jefferson Davis and Robert E. Lee as the most conspicuous figures in its stormiest days.

Before leaving Bavaria, Henry Mayer had endeavored to recover in a legal proceeding a sum of money which he had loaned, and had been defeated in the trial court, and in some other courts, until finally the court of last jurisdiction had given him a judgment for the money. By this time he was in Richmond, Virginia, and it is said that he never collected what was awarded him. He was a thrifty, industrious and prudent man, and at once set about to establish his economic independence in his new home. His great

ambition was to give his children a good education, and it particularly centered upon his son Levy, in whom he saw at an early age the making of a lawyer. Mayer, senior, had for a time gone to the Gymnasium in Bavaria and there had imbibed some legal education. He wished to see his own defeated ambition realized in his son. Clara Mayer is still spoken of as a woman of keen intuitions, endowed with fine business instinct and an active mentality.

The Mayer family found that America, too, was in a ferment of ideas. This was due not only to the agitation about slavery as a result of the Kansas-Nebraska legislation, but every variety of moral reform was discussed and was beginning to formulate itself into law. The temperance question which had disturbed America for a good while had eventuated in a law in Maine which prohibited the liquor traffic; and prohibitory laws, by 1854, had been enacted in Massachusetts, Vermont, Rhode Island, Connecticut and Michigan. In New York, Governor Seymour had vetoed a prohibitory law, but that only rendered more active the temperance men in that state. And everywhere it was found that the anti-slavery men had united with the cause of prohibition. It was also the days of distrust of Roman Catholicism and the era of the Know Nothing Party, which was devoted to attacks upon aliens and Catholics. When the war between the States came on, the new home in Richmond had lost whatever illusory appeal it had for these immigrants from Bavaria. On March 1, 1862, Jeffer-

son Davis, the President of the Southern Confederacy, proclaimed martial law in the city of Richmond and the adjoining country to a distance of ten miles, and at the same time had suspended the privilege of the writ of *habeas corpus*. The execution of this law had been placed in the hands of General Winder, and he was invested with almost unlimited power. He prohibited the distillation of spirituous liquors and closed all liquor shops. Extraordinary arrests of law-abiding citizens were made, capricious actions of tyranny were committed and their victims were left without redress. He established an abominable passport system, arrested editors and closed up the offices of newspapers. It was a reign of terror. Beginning with July 1, 1863, the campaign of Gettysburg was waged, and General Lee was hurled back from his invasion of the North. Then, on September 15, 1863, President Lincoln suspended the writ of *habeas corpus* in the North.

To escape this tyrannous turmoil, Henry Mayer and his wife decided to leave the South and to go to Chicago. After great difficulty in securing necessary passports and after some delays in getting through the military lines, they reached New York and took their way to the capital of the Mid-West, which at this time had a population of 160,000 people. It was not only the conditions in the South and the hope of Chicago that influenced Henry Mayer in this step. In the land from which he had come, the name "republican" signified an extreme of liberal politics. Here in America he found the Republican Party in process of

RESIDENCE OF HIRSCH GOLDSCHMIDT

organization and successful in the election of a president within five years of his arrival. It was the predominant party in the North, while in Richmond the word "democratic" was associated with the interests of the slaveholders. In a word, he was in full sympathy with the North, its convictions and its policies; and Chicago held out to him opportunities and social and political liberties which he was unable to find in the southern city. There was also the fact that friends who had left Germany had settled in Chicago, and he looked forward to the renewal of old associations and the making of new ones. With his wife and children, one of whom was Levy Mayer, now five years of age, he took up his residence on the Northwestern Plank Road which afterwards became known as Milwaukee Avenue, and is so named at the present time.

There were several of these plank roads in Chicago at this time, and they ran like the spokes of a wheel from the business part of the city which surrounded the Court House, which was the hub. The other plank roads were Archer, Blue Island and the one known as the Southwestern, which afterwards became Ogden Avenue. The Northwestern Plank Road, or Milwaukee Avenue, was in that part of Chicago beginning to be settled by Germans and Poles and other Nordic stocks of Europe. Between these plank roads were large acres of unsettled prairie. In the subsequent platting of Chicago these plank roads were retained as streets and became the most convenient avenues for car lines. At this time Francis C. Sher-

man, a Democrat, was Mayor of the city. In the spring of 1863 he had defeated Thomas B. Bryan, a prominent citizen of Union sympathies, by a majority of 588 in a total vote of 20,346. There was in the city and in Illinois at this time a strongly divided sentiment on the war. Even many of those who opposed dis-union and hated slavery considered that the war was unnecessary. In the darkest days of the struggle, when the issue was in doubt and the Northern armies were unsuccessful, Illinois had elected a legislature which in turn had elected a United States senator who was opposed to the war. And then the legislature had been prorogued by Governor Richard Yates to prevent its presenting a memorial to Congress to call a peace conference. So that in their new home in Chicago, the Mayer family did not find their environment wholly peaceful.

In 1863 Chicago presented a strange and undeveloped appearance. The center of the town was the Court House which stood in the square now entirely occupied by the County Building and the City Hall. This old Court House was five stories in height and was surmounted by a lofty cupola decorated with classic pillars. It stood in the center of a block of ground which was enclosed by an iron fence, and its doors were reached by walks, direct and diagonal, running across the lawn which was more or less filled with trees. From the cupola of this Court House the whole city, north, south and west could be seen; and to the east the expanse of the lake, and a good deal of

OLD COURT HOUSE

the time the shores of Michigan, since this was the day before the air of the city was befogged by bituminous coal smoke. The Court House Square was surrounded by a motley of high and low buildings, some four and five stories high and of considerable architectural beauty, built of marble or brick; and some only a story or two high, built of frame and dating from the very early times of Chicago, from the decade of the '30's, when Chicago was incorporated and began to move forward to a place of importance. On one corner of the square stood the marble Sherman House, a building six stories high and at that time the finest structure in the city, and one of the best maintained hotels in America. South, on Washington Street, there was a whole block of primitive prairie land; and this lay a dozen feet below the plank sidewalk, the only kind Chicago had in those days; and most of these were above the surface of the earth. It was two or three years after this time that the Music Hall was erected on the corner of Clark and Washington Streets, opposite the Court House, and whose site was later to be occupied by the Chicago Opera House, being at the present time the site of the Conway Building. On the corner of Washington and LaSalle Streets, where the Chamber of Commerce building stands now, the First Baptist Church had its location, a structure of considerable dignity and beauty, with a spire which towered over all the surrounding structures. The southwest corner of LaSalle and Washington Streets, just across from this Baptist Church, was then

marked by a two-story brick dwelling; and on the northeast corner of Washington and Clark Streets stood the Larmon Block of four stories, and on the corner of Randolph and Clark there was a decaying frame building, then used as a store, with law offices above. On the northeast corner of Randolph and LaSalle Streets there was a four-story brick building; and all the rest of the block between that corner and the Sherman House was filled by two-story frame buildings in a bad state of repair, since they had been constructed there during the '30's. The street floors of these buildings were used for cheap restaurants, while the second stories were the offices of the justices of the peace, and the lawyers that make such places their resort. On the northwest corner of LaSalle and Randolph stood the Metropolitan Block, and from this corner, running south to Washington and LaSalle, there was nothing but abandoned residences, which had begun to give way to the aggression of business.

At this time steel and granite had not possessed the city. On the contrary, Wabash and Michigan Avenues were tree-lined, and Cottage Grove was surrounded by woods. At Thirty-fifth Street, which in 1863 was outside the city limits, the old Chicago University, founded by Stephen A. Douglas, stood amid a dense forest of oaks. All of this might be seen from the cupola of the Court House. Looking north and east on Clark Street, an unbroken stretch of forest land could have been seen from North Water Street, as far as the eye could reach. Included in this waste was

the present Lincoln Park, which was then a cemetery. Hence it was that Chicago was called the "Garden City," because of its trees and its noble estates situated in large spaces of umbrageous ground. If the spectator in the cupola of the Court House turned his eyes southward again, he saw scattered buildings along the course of Cottage Grove Avenue; and at this time, between Thirty-second and Thirty-fifth Streets, a high-boarded enclosure, filled with barracks, and which in the early days of the war served as a recruiting camp, but was now a prison for the men who were captured at Fort Henry and Fort Donelson and at Island Number 10. Then, looking west of this camp, one would have seen the territory that became the site of the packing plants, at what is now about Forty-seventh Street; and between that and Twenty-second Street, north, a large acreage, wholly unoccupied, which was soon after 1863 to be traversed by Wentworth Avenue, named for Long John Wentworth, of mayoralty and congressional fame in the middle days of Chicago. Down the Archer Plank Road, which ran in a southwest direction from State Street, the spectator would have seen a thinly-settled locality with here and there a hotel or boarding-house or a glue factory; and farther beyond, Bridgeport, a settlement beyond the corporate limits of Chicago. Between the south branch of the Chicago River and the Archer Road, there was a marsh land, wholly unsettled and known to the people of that day as "hard scrabble." It was later to become the lumber district.

But at this time the lumber yards were along the south branch of the Chicago River, north of Eighteenth Street; while grain elevators towered proudly for that day along both the north and south branches of the river. The spectator would be looking over a city that was then boasting itself to be the foremost grain, lumber and packing center of the world.

The war had stimulated building and enlargement in the packing district already referred to, but at this time of 1863, Lake Street was the shopping district and was also the center of the packing and wholesale interests. The Board of Trade had its building on South Water Street. On the whole, after the panic of 1857, building operations in the business district were brought to a pause until about the year 1865. Marshall Field, the founder of the great store of Chicago, together with his partners, Leiter and Palmer, were in Lake Street at this time. Up from Lake Street and on the corner of Dearborn and Randolph, the bright and gay part of the downtown district commenced. This corner was on the way to the Post Office, then located on the corner of Monroe and Dearborn Streets, afterward the site of the First National Bank. And until 1866, when the mail delivery system was inaugurated, every one had to go to the Post Office for his mail; and in passing down Dearborn Street one encountered Rice's Theater, perhaps the most popular place in the city at that time. And, on the corner of Randolph and Dearborn Streets, was Ike Cook's

POST OFFICE OF 1863

"Young America," reputed to be the headquarters of Senator Stephen A. Douglas.

The year 1857, with its panic, brought to a close one of the great building eras in Chicago, in which iron and stone were greatly used for the construction of the important buildings, many of which were five stories in height. In 1863 the Burch Block on the corner of Lake Street and Wabash Avenue, built in this manner, was one of the conspicuous examples of this style of architecture, as was the great building of iron and brick known as the Hubbard Building on South Water and Wells Streets; and the Lloyd Block, still another building of the same character on Randolph and Wells Streets. In addition to the Sherman House, already referred to, there was the "Tremont," a large hotel of five stories, on the corner of Lake and Dearborn Streets; and the "Richmond House" on South Water Street and Michigan Avenue.

It was these hotels, together with the large buildings described, the Court House cupola, the grain elevators and the church steeples which relieved the low and irregular perspective of the Chicago sky-line. The iron age which ended in 1857 was followed by the marble age, so called from the fact that the opening of the Lockport-Lamont quarries not far from Chicago gave the city convenient building material. In consequence, Michigan Avenue made a very brilliant showing with the Bishop's palace on the corner of Madison and Michigan Avenues, and the "Marble

Terrace," which was a solid block of palaces built of Lamont stone, four stories in height, which occupied the space upon which the Auditorium Hotel was subsequently built. Nor must it be forgotten that the huge structure which was called the "Wigwam," located between Randolph and Lake Streets and facing the river, and in which Abraham Lincoln was nominated for President, was still in existence at this time, but now with its street floors occupied by feed stores. Across the street from the "Wigwam" stood the Lind Block, a building of considerable importance, and later distinguished by the fact that it was the only building on the south side of Chicago which escaped the devastation of the fire of 1871.

In addition to the lumber and the packing interests, already mentioned, the McCormick reaper factory stood on the north bank of the Chicago River, near Randolph Street bridge; Peter Schuttler's wagon factory was on the west corner of Randolph and Franklin Streets, the Oriental Flour Mills on the west bank of the river and the Madison Street bridge. The town of Pullman was unknown and the great steel industries of South Chicago were in the germ in the P. W. Gates foundry which stood on the east side of the river near Wabash Avenue. Although Chicago was then a railroad center and destined to become the greatest in the world, all of the stations were mere shacks except that of the Illinois Central, which was built of stone and stood at the foot of Lake Street, a block east of Michigan Avenue. At that time the

tracks of the Illinois Central Railroad lay upon piers in Lake Michigan; and between the tracks and the west shore of the lake there was a spacious body of water, used as a lagoon for sailing vessels and private craft; and between the west shoreline and Michigan Avenue there was a considerable strip of ground ornamented with a row of trees, and along the west side, a sidewalk; then Michigan Avenue, then another row of trees, then the residence and buildings from Park Row to Lake Street. Park Row was distinguished by many handsome residences, a long row of which was continuous and solid from the east end of the street at the lake, west to buildings of more decorative architecture; and on the corner of Park Row stood a residence with bay windows and porches, such as one would see in a small suburban city of the present time.

Such was the general appearance of Chicago when Levy Mayer, a boy of five years of age, came to it with his father and mother, destined to become the most active and powerful lawyer of the city thirty years thereafter. At this time the Bar of Chicago numbered many lawyers of great ability, some of whom, as lawyers and in the walks of national politics, reached a national reputation. A few of these who were living at this time and some of whom were living and in practice during the beginning of Levy Mayer's reputation were as follows: Lyman Trumbull, who in 1863 was the United States Senator from Illinois, and who lived until the middle '90's; Murray F. Tuley, who afterwards became a Judge of the Circuit

Court and who died in 1905; Melville W. Fuller, who afterwards became Chief Justice of the Supreme Court of the United States, and who died in 1910; Lambert Tree, who in the Cleveland administration was Minister to Denmark; John D. Caton, for a long time one of the Justices of the Supreme Court of Illinois; Emery A. Storrs, an advocate of brilliant ability; W. C. Gowdy, for a long while the general solicitor of the Northwestern Railroad; T. B. Blackstone, afterwards president of the Chicago and Alton Railroad; and besides these, such men as Norman B. Judd, one of the intimate friends of Abraham Lincoln; Corydon Beckwith, John N. Jewett, Wirt Dexter, I. N. Arnold, one of Lincoln's friends, and E. S. Isham. There were also living in Chicago at this time such men of substance and ability as Conrad Seipp, John R. Walsh, Thomas B. Bryan, Lorenz Brentano, C. M. Henderson, A. C. Hesing, J. H. McVicker, Potter Palmer, George M. Pullman, Lyman J. Gage, N. K. Fairbank, R. T. Crane, Walter C. Newberry, Fernando Jones, H. O. Stone and Marshall Field.

Among such human forces as these and amid the driving energies of a city making its way toward leadership in the nation, the future merchant, David Mayer, and the future lawyer, Levy Mayer, began to prepare themselves for their careers, wisely assisted by a devoted father and mother.

LEVY MAYER AS A BOY OF FIVE

CHAPTER II

CHICAGO SCHOOLING—YEARS AT YALE
THE LAW INSTITUTE

THE family had lived under the most frugal conditions in Richmond, and after they came to Chicago strict economies had to be practiced while Henry Mayer was establishing the little business which he opened on the Northwest Plank Road. He began to deal in furnishings, small wares and tobacco. As before noted, he had received more than an ordinary schooling and had had an initiation into the study of law in a German Gymnasium. Both himself and his wife, Clara Mayer, had a passionate desire to give their sons every opportunity, and in particular to advance the education of Levy, who at an early age showed precocity and unusual intellectual energy. It was not long after their coming to Chicago that Levy was sent to the Jones Grammar School, which was located in the late '60's at the corner of Harrison Street and Third Avenue, now Plymouth Court. At the Jones School he seems to have had the usual experiences of a boy whose life is opening to a realization of the world. It was after his entrance into the Chicago High School that his capacity for acquiring knowledge and his industry in pursuing it revealed themselves.

The Chicago High School in 1869 was located on the corner of Monroe Street near Halsted Street, on

the west side of Chicago. Levy Mayer entered this school before he was twelve years old. The legal age of admission was higher than this, and especial exception was made in his case. Proof of his scholarship is shown by the marks which he received in his studies and which are still preserved in the formal report, certified to by George Howland, who was the principal of the Chicago High School at this time, and one of the well-known educators of Chicago. The marks were graded from one hundred down. According to these reports Levy was receiving 87 in geometry, 94 to 99 in history, 84 to 90 in Latin, 82 to 96 in Greek, 97 to 99 in spelling, and as high as 97 in rhetoric; while his average scholarship ranged from 83 to 97.3. His average attendance did not fall below 100, nor his deportment average below 99. The class at one time numbered twenty-eight pupils, and had as many as fifty-nine at the end of his experience in this school, at which time his ranking in the class was third from the top. While in this high school he was a member of the Irving Society, which was an association of the pupils for debating and other literary exercises.

By the time that Levy Mayer left the high school and had made up his mind that he would pursue the law course at Yale College, his brother, David Mayer, who was a few years the senior of Levy, had entered business, and as David Mayer was very anxious to see his brother attend the Yale Law School, he paid all the expenses. In June, 1874, Levy Mayer was making the preliminary arrangements to enter the

CHICAGO HIGH SCHOOL.

Report of Levy H. Mayer ..... for the Term

ending June 26 ..... 1874.

	Deportment.	Attendance.	Latin.	French.	Scholarship Average.	Deportment Average.	Attendance Average.	General Average.	Number of Pupils in the Class.	Rank in Class.
FIRST MONTH	100	100	95	98	953	100	100	941	57	3
SECOND MONTH	100	93	74	98	963	100	100	988	11	8
THIRD MONTH										
FOURTH MONTH										
EXAMINATION Average										
General Average FOR THE TERM					973	100	100	971	11	4

Scholarship, Attendance, and Deportment are graded from 100 to 0. The average of daily recitations in each study for the month, constitutes the Scholarship Average. The averages of daily attendance and deportment for the month constitute the Attendance and Deportment Averages. The Examination Average for the Term is regarded as equivalent to the Average for one month. The average of all those results for the term is the General Average, and constitutes the pupil's rank for the Term. The Deportment and Attendance Averages ought *always* to be 100. The Scholarship Average *ought never to fall below* 80 *in any branch of study.* If a pupil's average is lower than this, the parent may infer that his position and progress in his classes are *unsatisfactory*, and that unless an early improvement is manifested, he must fall back to a lower grade.

The parent is respectfully requested to examine particularly the accompanying report, and after appending his signature, to return it by the bearer.

GEORGE HOWLAND, Principal.

PARENT'S SIGNATURE.

FOR FIRST MONTH H. Mayer

FOR SECOND MONTH

FOR THIRD MONTH

FOR FOURTH MONTH

MARKS IN HIGH SCHOOL

Yale Law School in that fall. The rule of the Law School at that time was that an applicant for admission had to be at least eighteen years of age. Levy Mayer was now but sixteen; but the matter of his age was waived by the school. In the fall of 1874 applicants for admission to the Law School were not required to pass any preliminary examination. The requirements were not changed as to previous collegiate or scholastic training until the fall of 1875. There were two classes in the Law School, the Junior and the Senior. So far as the matter of qualification was concerned, Levy Mayer's common school and high school education, together with his industrious reading, had well fitted him for entrance upon the study of law; and it is more than probable that, if he had incurred the requirements in matriculation which were established later in 1875, he would have passed the examinations.

Accordingly, in the fall of 1874, Levy Mayer went to New Haven to enter the Law School of Yale College. He had prepared the way by some correspondence which he held with members of the faculty of the school in the previous June. At that time Yale College required a bond to the President and Fellows of Yale College to secure the payment of the sums of money which the student was liable to pay by the laws and usages of the college. This bond was signed in Levy Mayer's behalf by his brother David.

The devotion and interest of Levy Mayer's father and of the other members of his family come into clear

emphasis through the letters which he began to receive when he entered Yale and during the whole period of his course.

All the while Levy Mayer at Yale was in the most careful fashion keeping account of the money which he received, and of the expenses which he incurred. His journal, still in existence, shows how carefully he noted what he paid for board and lodging, for sundries, for washing, for pleasures like the theater, for books and stationery, for tobacco, railroad expenses to and fro between New Haven and Chicago, all with minutest accuracy and system.

He was also keeping memoranda of his reading and jotting down from time to time the names of the books which he had read, and those which he conceived that it was necessary for him to read. Among those which he prescribed for his study were De Tocqueville, Bacon's *Abridgment,* President Jackson's *Message to Congress,* Addison on Torts, Parsons on Contracts. He set down as books that he had read at this time, *The Ancient City,* by Vecoulanges, *Elements of Roman Law,* by Gaius, *Introduction to the Study of Roman Law,* by Cushing, Hilliard's *Six Months in Italy, Modern Study of Roman Law,* by Tompkins and Jenkins, *Roman Law,* by J. G. Phillimore, Maine's *Ancient Law, Science of Jurisprudence,* by Austin, *Science of Jurisprudence,* by Amos, Kent's *Commentaries, History of Rome,* by Niebuhr, *History of Rome,* by Arnold, *History of Roman Law,* by Hugo, *History of Roman Law,* by Walter, Savigny's

Roman Law, Blackstone's *Commentaries, Roman History,* by Goldsmith, *The Decline and Fall of the Roman Empire,* by Gibbon, *Roman Republic,* by Ferguson, Montesquieu's *Spirit of the Laws.* He was also devouring the periodicals, like the *North American Review, Edinburgh Review* and the *British Foreign Review.*

Levy Mayer did not apparently take any great part in the social festivities and club activities of Yale College. His whole energies seemed to be centered upon his studies and his miscellaneous reading. It is probable, too, that he did not, as he failed to do in later life also, take enough exercise to sustain so active a mentality and an intellectual life so industrious. He was a member of the Yale Club, however, but did not attend its Thanksgiving dinner on November 26, 1874. As he went on in the school, he relaxed somewhat from the arduous life of study to which he had set his hand and occasionally attended functions like the regattas.

At the commencement exercises in June, 1875, the Frederick H. Betts prize was offered for the first time to the member of the Junior Class in the Law School receiving the highest mark at the annual examination. It was an honorarium of fifty dollars and the young Levy Mayer won it. On June 29, 1876, Levy Mayer was graduated from the Law School of Yale College, winning the second honors in his class. The commencement exercises were held in one of the churches of New Haven and upon the stage, among other dignitaries, were Richard H. Dana and General W. T. Sherman.

When he entered Yale College in the fall of 1874, he endeavored to get employment in a law office where he could help to earn his expenses by doing copying and like services. In this he seems to have been unsuccessful; as later, after his graduation, and luckily for him, he failed to establish himself in Connecticut for the practice of law. There is a letter extant which indicates that he made some attempt to get the necessary permission to practice in the courts of New Haven. This letter was written by A. D. Osborne, the Clerk of the Superior Court of New Haven. He wrote Mayer that he had not appeared to take the oath of office as an attorney. Whatever may be the exact details with reference to this matter, he was soon after his graduation back in the city of Chicago. And, on the fifth day of June, 1877, the Supreme Court of Illinois entered an order upon his application for license to practice law, requiring him to file an affidavit that he was twenty-one years of age. At this time he was but nineteen and it was not until 1879, when he had arrived at his majority, that he was licensed to practice. But in the meantime he was engaged in studies and activities which fitted him for the great career that he was soon to enter upon in the courts of Illinois and the nation. He became the Assistant Librarian of the Chicago Law Institute, where he had leisure and opportunity to study his way through the loaded shelves confronting him for several years to come.

In 1871 the great Chicago fire had occurred which

burned off and destroyed buildings to the extent of 194 acres on the West Side, 460 acres on the South Side and 1470 acres on the North Side, making a total area of 2,124 acres. Altogether, there were 17,450 buildings destroyed, including the Customs House, the fine old Court House, already described, the Post Office, the Chamber of Commerce, hotels, depots, many churches and business blocks, theaters and newspaper offices. The total loss was something like $200,000,000. The devastated and stricken city, however, was generously remembered by other cities and by men of wealth all over the United States, and in some instances by banks and common councils of the Old World for the relief of those who were in want and suffering. It is gratifying to note among the contributions to this good cause such names as A. T. Stewart of New York, who sent $50,000, the City of Brooklyn, which sent $100,000, the District of Columbia, which sent $100,000, St. Louis, which sent $300,000, the New York Stock Exchange, which sent $50,000, and small cities like Peoria, which sent $75,000. President Grant remembered Chicago with a contribution of $1,000. The Common Council of London also sent money, as well as the House of Rothschild, the Liverpool Chamber of Commerce, and other institutions of worth. The fire had so crippled the city of Chicago that in 1876 it was still struggling to lift itself from the débris into which the catastrophe had cast it. Building operations after the fire had been very rapid and much energy was expended in re-

establishing the places of business and of city government; but in 1876 the schoolhouses were used for the courts, including the Chicago High School building, where Levy Mayer had been educated. Building operations, involving as they do commercial activity, are conducive to the prosperity of the lawyer. There was another circumstance in the Chicago fire which resulted in great litigation. This was the burning of the records, vouchers, books, papers, tax warrants and affidavits of title to real estate which were located in the Court House. The County of Cook, in which Chicago is located, had difficulty in getting proper legislation through the General Assembly for the restoration of these land titles and for the legal procedure necessary to reëstablish them. It happened, however, that these consequences of the great fire—the building and commercial activity, the condition of the land titles—did not, in a direct sense, influence the legal career of Levy Mayer. In general, his conspicuous and phenomenal success as a lawyer was identified with the commercial growth of Chicago, as later chapters will show. It indeed happened that he did not, as some others did, become a specialist in real estate law and in land titles. Nor did the opportunities which were produced by the fire hold him to the level of a commercial lawyer. At the beginning, as a general practitioner and in association with a brother lawyer, he did whatever came to hand, but he soon was called by the commercial expansion in the new economic era

into the legal work of great organizations, and the legal affairs of vast business enterprises.

The pictorial and somewhat curious thing that the fire did to him was to take him to the building which was occupied as the City Hall in 1876. Within a week after the fire, the Common Council of Chicago authorized a temporary City Hall to be constructed on what was called the Reservoir Lot, which was owned by the city and which was located at the southeast corner of Adams and LaSalle Streets, a lot occupied by the Rookery building since about 1890. When finished, the so-called City Hall covered the entire lot and was built around a brick sub-structure which supported an iron water tank which had belonged to the water-works system of the south side of Chicago. This brick sub-structure was transformed into safety vaults; and the building, when finished, contained rooms for the city officers and also accommodations for the County Recorder, some of the courts and, finally, the Law Institute and its library. The building nicknamed "The Old Rookery" was two stories in height, of brick and with its surmounting water tank, upon which was a flagpole with a flag, presented a half primitive and half grotesque appearance. It was to this building that Levy Mayer came upon his return to Chicago from Yale College. The Chicago Law Institute was organized to furnish to lawyers of the bar who joined it library facilities and desk and room accommodations for the investigation of questions of law. Levy Mayer, fresh from college, became assistant librarian of this

institution. As such, he swept the office and took care of the rooms and attended upon the wants of the lawyers looking for authorities and decisions, for which he received four dollars a week. In truth, no greater good fortune could have befallen him than this work which now came to him. He was young and had time on his hands. He had incredible industry and flaming interest and unflagging concentration. Here he laid that broad foundation in the law which supported the high apex of his phenomenal maturity in the great days of the twentieth century, when he proved himself a legal master of a new type dealing with the evolving law of the new commercialism.

Levy Mayer was destined to remain in this library for three years. At once he set about to prepare a catalogue of the books of the Institute, something not existing before his day. He also revised the manuscript of Rorer on *Interstate and Private International Law,* and Rorer's *Judicial and Execution Sales.* When they were published he received a royalty of twenty-five cents a copy. Two thousand five hundred copies were sold in two years. He also gave his spare time to writing for magazines and periodicals devoted to legal questions, receiving from ten to twelve dollars for a contribution. Seymour D. Thompson, who became Chief Justice of the Court of Appeals of St. Louis, as a young man came into the Law Institute one morning and found Mayer, the assistant librarian, dusting the shelves. Thompson asked, "Is the librarian in?" Mayer answered, "Not yet." Then,

THE OLD ROOKERY EXTERIOR

after he had finished the work of dusting the shelves, he said, "He is in now. I was the janitor; now I am librarian." With all his occupations in this library, he had leisure to read and he improved it to the full. But that was only a phase of his legal discipline at that time. He found himself daily in a sort of Socratic test of dialogue between himself and the lawyers who came to the library seeking to find the law. The eager and intelligent assistant librarian obligingly attended to the wants and inquiries of those bent upon working out their problems; and the lawyers soon discovered that their labors were lightened by the apt young legalist who so frequently could lay his hand immediately upon a desired decision or a convincing page in a text book; and who was rich and fluent in discriminating analysis of questions and authorities. Some of the lawyers of Chicago have written accounts of their contact with Levy Mayer at this period of his life, and they give vivid understanding of his eager mind and genial personality. Benjamin F. Richolson, a practitioner of long and excellent standing at the Chicago Bar, has made an interesting portrait of Mr. Mayer in the old Rookery library: "In those days," to use his own words, "we had some great lawyers also. The one thing which struck me very forcibly about Mr. Mayer then was that the greatest lawyers of the day, men like Emory A. Storrs, Leonard Swett, W. C. Gowdy, Wirt Dexter, John N. Jewett and Murray F. Tuley, were so respectful and friendly with young Mayer; but I soon learned that it was not

merely because of his genial and friendly manner that they so often came in to see him; but in addition to that I found that they seldom went to the law library without seeking his assistance in the solving of some intricate question of law. I became much interested in listening to the legal discussions they had with him. I saw them frequently come asking him if he could tell them of a decision or an authority on some question of law, or any precedent on legal procedure, and never once did I hear him say no. Never did they go away empty handed. He would think for a minute or two, seldom longer, and he would go at once for a book, and never did he find himself mistaken and find that the book he brought contained nothing in point about the subject mentioned. Generally, in fact almost always, it was the very book that they wanted. Mr. Storrs was trying an important case one day, and as the Court adjourned for the noon hour, he came into the library and asked Mr. Mayer if he could tell him where he could most likely find an authority on a certain point of law which had suddenly arisen in the case. Instantly Mr. Mayer went away and in a few moments returned with three books, one an Illinois decision, one a Massachusetts case and another by an eminent law writer, and pointed out just what was wanted. Mr. Storrs glanced rapidly through them, but long enough to see that his point was covered by these books. He looked quite earnestly at young Mayer, and then remarked, 'Young man, you are quite remarkable. I have noticed that you not only

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know just where every book in the library is, but you also know just what is in every one of them. This saves the day for me.' "

Continuing, Mr. Richolson wrote: "Another thing was the unfailing kindly, smiling willingness with which he rendered such assistance and the eagerness with which he went about it. As soon as a legal proposition was stated to him he was at once immensely interested and never did he stop until he had fully mastered it; and he never forgot either the principles involved nor where the law could be found. It was not so surprising that he could be keenly alive in his assistance to these eminent lawyers, because his keen mind would naturally be stirred by coming in contact with these great and mature minds. But what did surprise me was that when some mediocre lawyer would seek his assistance, lawyers who were unable to clearly and logically state what principle was involved, and some who could only give him a halting and imperfect statement of what the facts of the case were, and really knew nothing about how to apply legal principles to the facts, he would cheerfully and with infinite patience tell them not only what the law was and where to find it, but he found it, too, and he explained why the case they were relying on was not in point; and going into great detail, so that they might fully understand and comprehend and know how to present it to the Court. I asked him one day, after he had labored long with one of these rather stupid lawyers, 'How can you have the patience to

go over it in such painstaking detail?' His answer was, 'Some of these lawyers really have no business or right to practice law or undertake cases for clients, but they are in it now, and unless some one helps them their clients will suffer wrong and an injustice will be done to some one; and any way they are doing the best they know how, and I feel that I must help them when they come to me.' He was a man who freely gave of himself unsparingly."

Judge Jesse Holdom, who came to Chicago in 1868 and who for many years has been and still is a Judge of the Superior Court of Cook County, wrote as follows of this period of Mr. Mayer's life: "He made his initial bow to the Bar as an assistant librarian of the Law Institute. I observed then that he was a great student of the law, and expended all of the time not devoted to his duties in digging into the law books at his hand. He was courteous and obliging and quite helpful to lawyers as he knew the library thoroughly and had every book practically at his finger tips. In that early day he had a remarkable knowledge of case law."

One of the most sensational characters of Chicago's middle period was Wilbur F. Storey, who came to Chicago and purchased the *Times* with the idea of making it an organ of the Douglas Democracy, and who was destined by the irony of fate to chronicle the death of Senator Douglas not long after the *Times*, under Storey's editorship, began to devote itself to that cause. He was esteemed a "Copperhead"

because of his views on the war; and on June 2, 1863, General Ambrose E. Burnside suppressed the publication of the *Times* by a military edict. This created great excitement in Chicago and mass meetings were held which were addressed by speakers demanding a rescission of the military order. Such distinguished men as Senator Trumbull and Congressman Arnold, Wirt Dexter and Murray F. Tuley addressed these gatherings. On June 4, 1863, the military order was rescinded by President Lincoln. But Editor Storey was, during his whole career, involved in spectacular journalism and in litigation of one kind or another. It happened that Levy Mayer, as the assistant librarian in 1876, had something to do with the storms that broke about the head of W. F. Storey. At this time Alfred S. Trude was one of the notable lawyers in Chicago and so continued to be until he retired from practice in the first decade of the twentieth century. Mr. Trude wrote as follows concerning his first meeting with Levy Mayer in the year 1876:

"I visited the library in pursuit of authority in the matter of the indictment of W. F. Storey, editor and owner of the *Chicago Times,* for criminal libel for publishing in that paper an article charging a member of the legislature, Mr. McGrath, with being a 'jail bird.' The indictment failed to set out extrinsic and explanatory matter showing that the words 'jail bird' had a sinister and libelous meaning. It was while thus engaged that Levy Mayer endeavored to aid me in the search; and to him was due the credit of the

motion to dismiss the indictment. I found him both willing and indefatigable; and while I found a few authorities he secured two that were decisive not only in this case, but in two other cases of a like nature. The second case of *A. H. Walker vs. The Chicago Tribune,* in the United States District Court was an action for libel for publishing an article set out in plaintiff's declaration wherein he was called a 'crank.' To this declaration we filed a demurrer, which the Court sustained for the same reason as that set out in the 'jailbird' case."

Mr. Trude also reported this circumstance: "In 1876 William Beck, Chief of Police of Milwaukee, obtained an indictment against W. F. Storey for criminal libel, and applied to Governor Luddington of Wisconsin for Storey's extradition and to Governor Beveridge (of Illinois) for governmental warrant for Mr. Storey's arrest and removal to the required state. As Storey had been assailing Governor Beveridge bitterly in the columns of the *Times,* we feared that he would issue his warrant without delay. How to devise a method to prevent it was difficult, and we worked at it day and night to obtain relief. Finally Levy Mayer found that unique and clear-cut case of *Taylor vs. Taintor,* 16 Wallace 366, wherein the Supreme Court of the United States decided that a bail piece was the only process known to the law that was more powerful than an extradition writ or governmental warrant, and the only instrument that could hold a prisoner im-

mune from the service of any writ, whether possessed by a sheriff of the state or a marshal of the republic. At this time Mr. Storey was admitted to bail here, in a case brought by Commissioner Sam Ashton for criminal libel; and while Mr. Storey was in New York, his bail was forfeited and the bail piece was issued to his bondsman, Frank B. Wilkie, senior editor of the *Times*. On Mr. Storey's return to Chicago he was immediately arrested on the referred-to bail piece, and held in close custody and protected against arrest or any other process. This gave us time to present an argument and proof to Governor Beveridge and his attorney, Edsel, both of whom joined in refusing to issue an execution warrant. Later Mr. Storey was found not guilty of libel in the Ashton case, and was once more entirely free."

Adolf Kraus, who was Levy Mayer's first partner in the practice of law and with whom his career as a practicing lawyer began, wrote that though he had known Mayer since he was sixteen years of age, his intimate contacts with him began in the library of the Law Institute. "He was of great assistance to me," wrote Mr. Kraus, "in finding legal authorities."

But Levy Mayer's activities were not confined solely to the Law Institute or to his legal studies. Following his habits at Yale College, he was at this period of his life engaged in extensive reading of history and philosophy and creative literature. He was also keeping in touch with the American and English

literary magazines as well as the law journals. It is to be remembered that at this time, in 1876, the reports of the decisions of the Supreme Court of Illinois did not number many more than seventy-five volumes, and that the reports of the Federal Courts were equally inconsiderable, as compared with what they are to-day. It was, therefore, possible to an industrious and comprehending mind, like Levy Mayer's, to read them all and thereby to make a gradual synthesis of the law as it developed by the issuance of succeeding reports. Indeed, there were other lawyers in Chicago, at this time and somewhat earlier, who did this very thing. The most conspicuous example of this enterprise in legal education outside of Mr. Mayer was probably John P. Wilson. In his case it happened that he specialized in real estate law which was so much complicated, as well as enriched, by the circumstances of the Chicago fire.

And old friend of Mr. Mayer, Henry L. Frank, has told of a literary organization called the "Zion Literary Society," which was formed in the early '70's. After Levy Mayer returned from Yale he became a member of this group which met at Zion Congregation Synagogue, located at the corner of Sangamon and Jackson Streets, where debates were held, recitations given and essays read before enthusiastic youth. Mr. Frank wrote that after each session of the club, whether the feature of the occasion was a debate or an essay, a critic was appointed to pass upon the contribution, whatever it chanced to be. "Levy Mayer

was one of the first critics to be appointed," wrote Mr. Frank. "It was shortly after his return from Yale University. His keen insight, his discernment and his well-stored mind took the audience by storm. After this, his first effort, he was looked upon as one of the foremost members of the society. I became interested in the young man and tried to procure him a position commensurate with his experience. A prominent merchant of this city wanted to know whether I could recommend to his firm a bright, active young man. His pay for such services would be liberal. I at once thought of Levy Mayer and told the merchant I knew of a young man who answered his requirements. But Levy Mayer did not entertain the offer for a moment and gave me to understand that his ambition led him in a different direction. Wisely did he decline the offer, for he knew that legal lore could not be obtained in such employment."

To re-create the Chicago of 1876, and as it was during the time that Mr. Mayer was the assistant librarian at the Law Institute, and was preparing himself for that active career at the bar which, until his death, became so much a part of Chicago's story, some of the details of the city's life and some of its principal actors in this period may be given. In 1876 the population of Cook County was 500,000 people and of Chicago, 407,661, which mounted to 436,731 in 1878 and to 491,516 in 1880. Richard Yates and Lyman Trumbull were the United States Senators of Illinois, both having figured in the historic days of

the war between the States. John L. Beveridge was Governor, Luther Lafin Mills was States Attorney of Cook County, Richard S. Tuthill, afterwards a Judge of the Circuit Court of Cook County, was the City Attorney, and Monroe Heath was the Mayor of Chicago, having been elected in the summer of 1876 as a Republican by a vote of 19,248 over Mark Kimball, a Democrat, who received 7,509 votes. In 1876 there were 1,025 lawyers, and the Bar was increasing at the rate of about fifty lawyers a year. Chicago was growing and rebuilding. In 1877, 1,398 new buildings were constructed, 937 of brick and 461 of stone, at a total cost of $6,561,880. In 1885 the number of buildings constructed reached the figure of 4,638, of which 157 were office buildings, 668 were stores and dwellings and 2,967 dwellings, at a total cost of $24,430,125.

During these years and until 1881, Levy Mayer's life was in the formative stage. He saw around him the processes that were making a great metropolis. He had contact with the able men of an earlier day, some of whom were at the middle of their careers. The sharp, energetic air of Chicago, its intense psychical quality, already in evidence, found the right material in the nature of Levy Mayer for the making of the dynamic force which he became at the Bar and in the public life of the city. If the essential genius of Chicago as a factor of environment was partly responsible for the making of him, he, in turn, was destined to help make Chicago. He grew up with the

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city, because its days before the great fire belonged to its unformed youth. It was fortunate for Levy Mayer that he so thoroughly prepared himself for the practice of the law, both by his collegiate course and by the invaluable experience which he had in the Law Institute. When he had an opportunity to form a law partnership he was thoroughly ready for his work in life. In 1881 his chance came in the offer of a partnership with Adolf Kraus, a lawyer who was already established in practice and a good many years Mr. Mayer's senior. The report of this experience is reserved for another chapter.

CHAPTER III

FIRST LAW PARTNERSHIP—OTHER PARTNERSHIPS—CELEBRATED CASES

ADOLF KRAUS came from Rokycan, a Czechish city of Bohemia, arriving in America before he had attained his majority. He reached Chicago in 1871, while the fire engines were still engaged in subduing the great fire which swept the city in that year. In 1877 he was admitted to the Bar of Illinois, and soon built up a lucrative practice among the Bohemian people, which gradually extended itself to a larger and more general clientele. He first came in contact with Levy Mayer in the summer of 1879, when it happened that they were arrayed on the opposite sides of the trial table in a case arising out of the sale of a horse. The defendant in the case was David Mayer, Levy Mayer's brother, already prospering as a merchant in Chicago. Levy Mayer had not at this time left his work as assistant librarian in the Law Institute; but evidently he was eager to acquire legal experience, and his brother's case offered an opportunity. He took part in this controversy as an assistant to an experienced lawyer who was representing David Mayer, with Kraus on the other side. Levy Mayer's rôle was the collection of the legal authorities and the handing of them to the lawyer who was arguing the case for David Mayer before the Justice of the Peace who was trying it. David Mayer lost the

case and appealed to the Circuit Court. In the meantime Adolf Kraus saw Levy Mayer frequently at the Law Institute, as he was accustomed to do before this. Finally Mr. Kraus' partner, William S. Brackett, because of illness in his family, was getting ready to sever his legal association with Mr. Kraus, and as Mr. Kraus had a large and growing business, he needed some one to help him, and he thought of Levy Mayer, both on account of what he had observed about him at the Law Institute, as well as what he had seen him do as an assistant to David Mayer's attorney in the horse case. Accordingly, one day when Mr. Kraus was at the Law Institute, he offered young Mayer a partnership. Mr. Kraus has said that Mayer's prompt response to this offer was, "How much income will you guarantee me a year?" and, being told that nothing would be guaranteed him, and that if he could not afford to take the risk not to do it, and that an answer was desired within the day, he went his way. A few hours later young Mayer came to Mr. Kraus' office and assented to the partnership arrangement.

There was still pending on appeal the horse case; and this was about to create a complication in the formation of the contemplated partnership. As they discussed the solution of this difficulty, young Mayer finally said that he had saved $200 out of his earnings as assistant librarian, and that it was all the money he had; but he proposed that he advance $100 and that Mr. Kraus advance $100 for the payment of the judgment. This was done before the articles of part-

nership between the two were signed. Mr. Kraus has also related that young Mayer did not like the desk and the chair which the former partner, Brackett, had used, and that he offered to buy a new desk for him, which young Mayer declined. Instead, he used the other $100 which he had saved in the purchase of an office desk and chair.

According to Mr. Kraus, young Mayer from the beginning was able to do more work in a day than the average lawyer could do in two days, and do it well, besides. For a year he was kept at office work, drawing contracts, examining abstracts of title, investigating legal authorities, preparing briefs on questions of law and attending to office routine. He seemed to lack self-confidence as to the trial of cases and proceedings in court. Mr. Kraus related that these things made young Mayer extremely nervous; but that finally the business of the office increased to such an extent that he was unable to handle the court work alone and in consequence one day he told young Mayer that he would have to "take the jump and cure himself of his nervousness." "You might as well commence to-day," said Mr. Kraus. "Go into court and try the case which is on call. I do not think you will need my help, but if you should, I will be there ready to assist." Young Mayer then went to court to take charge of the case. At the outset he incurred an adverse ruling from the court, but it had the effect of driving all the nervousness out of him; and, rising to the occasion, he argued against the rule so forcibly

that the court reversed itself and decided in young Mayer's favor. From that day forward, according to Mr. Kraus, there was no lawyer in Chicago who had more self-confidence, and who was more at ease in a court room than young Levy Mayer.

The firm of Kraus and Mayer lasted from 1881 to 1887. By this time the business of the firm had become so large that it was necessary to take in another partner and, accordingly, Philip Stein entered the firm, the name of which became Kraus, Mayer and Stein. In 1892 Thomas A. Moran, one of the notable lawyers of Chicago, and who was one of the justices of the Appellate Court at that time, resigned from the bench and joined the firm under the partnership name of Moran, Kraus, Mayer and Stein. Their offices were now in the Unity Building, which was one of the first skyscrapers in Chicago and then but recently erected by John P. Altgeld, afterwards Governor of Illinois during one of the stormiest periods of the country. In 1892 Philip Stein was elected a Judge of the Superior Court of Cook County and the partnership name became Moran, Kraus and Mayer, and so remained until 1897, when Mr. Kraus retired, and the business was continued under the name of Moran, Mayer and Meyer, Karl Meyer and Abraham Meyer, Mr. Mayer's brothers-in-law, having been taken into the firm. In November, 1904, Judge Moran died and a new firm was formed under the title of Mayer, Meyer and Austrian; and in 1908 Henry Russell Platt was taken into the partnership and the firm name became

Mayer, Meyer, Austrian and Platt. In 1884 Isaac H. Mayer, Levy Mayer's brother, joined the organization, and in 1890 he became a member of the firm; and there were other able men who belonged to it from time to time, but whose names did not figure in its title.

Chicago had no Court House after the fire of 1871 until about the year 1885, when the baroque structure which preceded the present building was finished and ready for use. In the interval, the courts had been held in the old Rookery building where the Law Institute was when Levy Mayer was assistant librarian, in school buildings and in various other places in the city. Between 1881, the time of Levy Mayer's first partnership, and 1904, when Judge Moran died, the city of Chicago had undergone a complete transformation. At the former date it had a population of less than five hundred thousand people, and at the latter date, a population of nearly two million. The elevated railroads had been built on Lake Street, on Congress Street, to the northwest side, and on the south side as far as Jackson Park and Sixty-third Street. The surface railway system had very greatly extended itself and had passed from horse cars to cable cars; and, by 1904, there were many electric lines, and it was not to be long before the cable system was to be entirely abandoned. The down-town district had been rebuilt, and Chicago's skyline was pointed with numerous skyscrapers. The wealth of the city had vastly increased; the banking and business interests had mounted to

COURT HOUSE OF 1885

staggering proportions. The new commercialism, the growth of the great corporation, the development of business along gigantic lines had come into their own. The law business had changed and was daily changing. And along the way during these years many notable cases growing out of the societal and business conflicts of the city had occupied the columns of the newspapers, and in a great many of these most conspicuous legal controversies Mr. Mayer had taken a part. There had been money stresses, bank failures and many financial catastrophies, due either to local conditions or to panics of more general extent. All of this made for law business, and very soon Mr. Mayer found himself in the thick of the fray and called upon by more and more important interests to give them the benefit of his lawyer's knowledge and skill. He was gifted with a very wonderful business genius, which was greatly to his advantage, under the circumstances and considering that the time had arrived when the great lawyer had also to be a man of affairs and of business judgment. The spectacle of great business and great commerce fascinated his mind, and the law, as it applied to business and could be used for the advancement of industry, was his sole occupation of mind and his greatest delight. In 1893 he became counsel for the Illinois Manufacturers Association which undertook to secure the necessary legislation for the protection of manufacturers against the onslaughts of various public utility corporations.

Through this organization he came more and more in contact with the great commercial interests of the state, and he was their counsellor and their wise friend.

In 1889, when the firm name was Kraus, Mayer and Stein, Douglas Gordon McRae, at that time the editor of the *London Financial Times,* came to America for the purpose of investing English funds in industrial concerns in the United States. He came in contact with Mr. Mayer, with the result that the latter organized the Chicago and Northwest Granaries Company which was a merger of a great many grain elevators in the northwest of America, which were controlled by Mr. Van Deusen and others who were grain dealers in Minnesota, Dakota and Montana. Mr. Mayer formed a corporation under the Companies' Act of England to control a line of elevators along one of the largest trunk railroads of the United States. Immediately after this organization, Mr. Mayer was instrumental in interesting English capital in certain breweries of Chicago which were, through his labor, consolidated. And very soon after this Mr. Mayer brought about a merger of the various independent packing companies of Chicago, through which Hately Brothers, the Chicago Packing and Provision Company and the International Packing Company were united into one company which took the name of The International Packing Company, Limited. This was the beginning of the modern merger and consolidation of large business interests en-

gaged in a particular industry. It is true that the Standard Oil Company was organized shortly after the Civil War, but the manner of bringing several corporations or partnerships into one control was awkward, compared to the simple plan which Mr. Mayer used in effecting these consolidations. With the emergence of these great corporations into the economic field, political questions arose and great battles were waged against the trusts. Most of this opposition was ineffectual, because in point of fact, an industrial revolution, comparable to that resulting from the introduction of machinery, was being accomplished; and at the present time has been completely accomplished. Mr. Mayer's activities were confined to those of business and of law. He was concerned with economies, public and private, only in so far as they had to do with the advancement of commercial interests which were entrusted to his care. It may be said, however, that he was not far from sharing the attitude toward these great organizations which was taken by Theodore Roosevelt, William H. Taft and many men conspicuous in the political agitation of this period of American life.

In 1893, when the financial panic which affected the whole of America struck Chicago, Mr. Mayer was the attorney for the National Bank of Illinois, which was one of the largest financial institutions of Chicago. This bank had financial and business relations with a number of private banking institutions which accepted deposits and also made mortgage loans. The

World's Fair, which was held in Chicago in the summer of 1893 was the occasion of a local prosperity, which subsided with the end of the fair, when Chicago incurred the financial stress which was affecting the whole country. As a result of this, many of these private banking institutions became financially involved and were compelled to cease as going concerns. The cumulative effect of this was too much for the National Bank of Illinois, strong and prosperous as it had been, and a receiver was appointed for it. Out of this tumult and chaos came a bitter prosecution against E. S. Dreyer who was at the head of one of these private banks. He was defended in the criminal courts by Mr. Mayer's firm.

Long before this day, the telephone had come to Chicago and had gradually sent its wires over all the city and had obtained contracts for service which were considered excessive. Mr. Mayer instituted a suit for one of his clients about the year 1893 against the Chicago Telephone Company for the purpose of compelling it to submit its rates to regulation of the City Council; and, after bitter litigation, he succeeded in having the telephone company enjoined from collecting the rates which it had previously put in force. This resulted in a great saving to the taxpayers of the community and to the business interests. Contemporaneous with this work, he was associated with Rufus H. Choate, E. J. Phelps and William D. Guthrie of New York in litigation concerning the Union Stockyards and Transit Company, which was directed to the com-

pelling of that company to treat the independent and smaller packing interests with the same consideration which it was according to the large packers. In this litigation he was also successful.

As in the case of the Street Railway Companies, so the case of the Gas Companies is a long and pictorial story which cannot be fully entered into here. It was in the '50's that the Street Railway Companies and the Gas Companies began to get charters to use the streets of Chicago and to serve the public interest. Chicago, from that day forward, grew so fast that from time to time there was embarrassment in the service and all along there was much agitation and a good deal of resort to the courts on one question or another. In 1895 the Ogden Gas Company had received a franchise from the city of Chicago to lay gas mains in the streets, and to furnish gas to the city consumers. The People's Gas Light and Coke Company was at that time the sole institution in Chicago engaged in this business. It had a monopoly and was an old company. With the advent of the Ogden Gas Company into the field, a bitter war ensued. The rates for gas charged by the Ogden Company were substantially less than those charged by the old corporation, which had fixed its rates through its power as a monopoly. The old company, to put this new competitor out of the field, inaugurated an attack on the franchise of the new company and claimed that the franchise was void because, it alleged, it had been fraudulently procured from the city. This was one of

Mr. Mayer's greatest cases at this period of his life, and he was successful in his defense of the Ogden Gas Company and in having its franchise declared by the courts to be regular and valid.

The story of the freight tunnels under the city of Chicago is strictly indigenous to that vital, colorful, turbulent metropolis as it was expanding in the '90's of the last century. Between 1880 and 1910, no city of the United States had so many forceful and so many interesting characters in the professional and business walks of life, and in politics and in sport. In the middle '90's, and later, there were five or six well-known men in Chicago who were engaged both in business and in politics, and some of whom were members of the City Council, or in some other way were related to its government, who figured almost daily in the public press, and who were the subjects of cartoonists and the columnists. It is said that the freight tunnels under the city were begun to be dug in the alley back of a saloon of one of these political figures. The story is that in the night workmen used the first spades upon this prodigious work and that, having sunk a shaft there, the tunneling thereafter was done under the streets and in various directions from the point of this shaft. All the while the dirt was quietly hauled by wagon at night to the lake front where the city at this time was engaged in making land in Grant Park, east of the Illinois Central Railroad tracks.

The written records on the subject are, however, that on February 20, 1899, a franchise was granted by

the City Council to the Illinois Telephone and Telegraph Company to construct, maintain, repair and operate, in all the streets, avenues and alleys and other places in the city of Chicago, a line or lines of conduits and wires which should be laid in such a way that access thereto might be had from the surface of the streets in and from a tunnel beneath their surface. The Illinois Telephone and Telegraph Company had been incorporated for the purpose of establishing an independent telephone system for the city, and in competition with the Chicago Telephone Company. On the twenty-ninth of January, 1900, a resolution was presented in the City Council of Chicago by one of its aldermen setting forth that it was currently reported that the Illinois Telephone and Telegraph Company was constructing a conduit system under the streets so large that it would interfere with other or different uses of the streets, should it thereafter be desired by the city so to use them; and so extended as to be in violation of the letter and spirit of the ordinance upon which the company's rights depended. The resolution proposed that the Commissioner of Public Works be requested to inform the City Council what permits had been issued to the company for doing this work; and, further, to report to the Council what work had been done by the company and how far the work done was, in his opinion, within the fair letter and spirit of the ordinance. On the fifth of February, 1900, the Commissioner of Public Works made his report to the City Council, in which he

stated, upon the authority of the City Electrician, that the space being used by the Illinois Telephone and Telegraph Company was not more than absolutely necessary to accommodate the business to be transacted by it, and not more than was necessary for the placing of the company's wires, such as the city might need for light and telegraph purposes. He further reported that the conduits were being constructed at a point twenty-five feet below the surface. At this point the story becomes tangled. It was alleged in the indictment, which was returned by the grand jury against certain aldermen and officers of the Illinois Telephone and Telegraph Company, that this report was ordered by the City Council to be placed on file and that alone; but that, on the other hand, these persons falsely and fraudulently caused to be inserted, in the proceedings relating to the reception of this report and the order that it be placed on file, the words that it was duly approved by the City Council; which, if true, meant that the character and extent of the tunneling being done by the Illinois Telephone and Telegraph Company was approved by the city authorities.

Mr. Mayer represented the defendants in the motion which was made in the Criminal Court of Cook County to quash the indictment, directing against it the argument that no public record could be the subject of forgery unless it affected a pecuniary demand or obligation or property right which must be manifested on the face of the document itself. He con-

tended that, even if it were true that the records of the City Council proceedings had been altered in the way charged, still the alterations did not legally effect an approval of the permits granted to the Illinois Telephone and Telegraph Company, or the plans submitted; nor could the alterations bind the city as a confirmation of the opinion of the Commissioner that the work was within the letter and the spirit of the ordinance; and that the Council's action, even if it had been, in fact, all that it was with the supposed alterations included, would be but the expression of a wrong opinion, not binding on the city. He argued that a franchise as important as this could not be granted by the mere approval of such a report, or the alteration of such a report by words which made it appear that it had been approved as well as filed. Mr. Mayer was unsuccessful in this motion to quash the indictment which was heard by Judge Tuthill and overruled. But, when the case came on for trial before Judge Chetlain and a jury, Mr. Mayer's argument, being presented at the conclusion of the State's case, to withdraw the case from the consideration of the jury, prevailed, though presented by other counsel.

The matter thus ended, so far as court interference was concerned; and Chicago finally woke up to the fact that there were sixty miles of tunnels under the city, thirty-three feet below the surface of the street, with trunk lines twelve feet nine inches in width by fourteen feet in height, and branch lines six feet by seven feet six inches in height; and that in these tun-

nels narrow-gauge railroads were laid, with electric locomotives and steel cars; and that these were being used for transporting goods to and from railroad freight yards and for carrying coal to business houses, and that in the case of new buildings the excavated earth and waste material were removed by this transportation system through the tunnels and finally disposed of, permitting the work of construction to go on without interruption. The tunnel system went into operation August 15, 1906, and the whole of it by September 1, 1907. The Illinois Telephone and Telegraph Company, the corporation which first received the franchise, was succeeded in October, 1903, by the Illinois Tunnel Company and this was followed by the Chicago Subway Company in November, 1904, to which the Chicago Utilities Company was successor in April, 1912, which had been organized with a capital stock of $53,000,000.

As before noted, Adolf Kraus retired from the firm in 1897. It was the occasion of Mr. Kraus' appointment as one of the Civil Service Commissioners of the city. He gave up a very large practice and imperiled his business interests to accept a salary of $3,000 per annum, but to serve the city in what he considered was one of its greatest exigencies. The Civil Service Law was bitterly opposed by the politicians because it interfered with the distribution of patronage. Mr. Kraus was subjected, while he held office, to great annoyance and embarrassment and at times he was exposed to physical peril. The storm about him was

such that he, in conjunction with his fellow commissioners, was indicted. Mr. Mayer, together with Judge Moran, came to Mr. Kraus' assistance and sued out a *habeas corpus* for him and the others to relieve them of the indictment. Mr. Mayer argued this matter with great ability, and with his usual thoroughness. The *habeas corpus* was heard by Judge Dunne, afterwards Mayor of the city an still later Governor of Illinois; and with him sat Judge Waterman and Judge Francis Adams, the latter of whom enjoyed an especially great reputation as a lawyer and as a judge. In discharging Mr. Kraus and the others, Judge Waterman said in part:

"For my part, I think this country has just reached the time which is to determine, for it never has been determined in the history of the world, whether a great nation, occupying an empire in a territory of at least seventy millions of people, whether a great nation like that can exist under a free democratic and republican form of government; and I am very well satisfied myself that it cannot, unless we come to a Civil Service System in the employment of the officials who are to serve the respective governments. And so I say, for my part, I think the people of this city ought to be congratulated on the very high character of the men who have been willing to serve the community as Civil Service Commissioners. . . . I do say that the evidence here discloses that these commissioners are entitled to the thanks of the community for all they have undertaken and for what they have done. They

had to be hardened against swearing men and crying women. They had to steel themselves against the prayers of ragged and shoeless children and the fists and threats of desperate men; and that they have done as well as they did, and carried out the laws as faithfully as they have, as appears from the evidence, and have put so large a portion of the employees of this city under the classified service, seems to me to entitle them to the thanks of the community."

Judge Adams, in ruling that the commissioners be discharged, said:

"I am of the opinion that there has been no violation of the act, either willful or as culpable negligence, as charged in the indictment. . . . I think all are agreed that no six more reputable gentlemen can be found in this community than the three who constituted the former Board of Civil Service Commissioners and those who compose the present Board. If we cannot trust them, no confidence can be placed in anybody."

And Judge Dunne said:

"We are all convinced from a careful examination of this record that neither one of these defendants is guilty of any technical violation of the law or any violation of morals. The order in the case, therefore, will be, in the *habeas corpus* case, that the relator will be discharged, and, in the criminal cases, not guilty in both cases."

To illustrate Mr. Mayer's genius for adapting himself to legal and economic changes and necessities, the

history of the Distillers and Cattle Feeders Trust and its subsequent successors is in point. The Nebraska Distilling Company was a corporation which was attacked in *quo warranto* proceedings upon the ground that it had become party to an illegal trust. This was in 1890. It was charged that in 1887 an unincorporated association had been formed in Illinois, known as Distillers and Cattle Feeders Trust, with its headquarters at Peoria, the object of which was to control the production of high wines, alcohol and spirits; and that, to effectuate its control, it brought about the transfer of the capital stock of various corporations, including the Nebraska Distilling Company, to trustees who represented the Distillers and Cattle Feeders Trust. The Nebraska court ousted the Nebraska corporation of its charter. Then Mr. Mayer resorted to the plan which had come into vogue of organizing a corporation to take over the properties of competing distillers. This corporation, called the Distilling and Cattle Feeders Company, was attacked in the Supreme Court of Illinois and there defended by Mr. Mayer. The Illinois court held that, inasmuch as the old trust had been held illegal, it was impossible to say that the corporation which succeeded to it and which was organized for the same purpose took on the character of legality. "There is no magic in a corporation organized," said the Court, "which can purge the trust scheme of its illegality and it remains as essentially opposed to principles of sound public policy as when the trust was in existence." Before, however, the

Supreme Court of Illinois had pronounced the death of the Distilling and Cattle Feeding Company, Mr. Mayer organized, under the laws of New York, a corporation entitled the American Spirits Manufacturing Company, with a capital stock of $35,000,000, which he intended should acquire the assets of the Distilling and Cattle Feeding Company. While, therefore, the proceedings were pending in the Supreme Court of Illinois to bring about the civil death of the Distilling and Cattle Feeding Company, Mr. Mayer and John P. Wilson filed a bill, in behalf of a stockholder of the Distilling and Cattle Feeding Company, in the Circuit Court of the United States for the Seventh Circuit for the appointment of a receiver. And thereafter, the receiver having been appointed, Mr. Mayer and Mr. Wilson, as counsel of a re-organization committee representing nearly all the stockholders of the Distilling and Cattle Feeding Company, petitioned the Federal Court for leave to purchase the $9,800,000 stock of the distillers and other properties of the company. As it was understood that this re-organization committee was acting for the American Spirits Manufacturing Company, and that the latter was organized for the purpose of continuing the business, notwithstanding any action that the Supreme Court of Illinois might take, it was objected against the proposal of this re-organization committee that the stockholders whom they represented were responsible for the unlawful conduct of the Distilling and Cattle Feeding Company, and that

the proposed purchase was for the purpose of continuing a monopoly of the distillery business. Judge Showalter of the Federal Court heard these proceedings and pronounced the objections without merit. "It seems to me," he said, "that there is no validity in this objection. In making their offer for this property, these petitioners are simply shareholders. In that capacity, they are interested in the property in question and have the right to preserve the same by buying it from the receiver, if the latter can be induced and empowered to sell. The court cannot assume that any improper use will be made of this property by the purchasers, nor can the court undertake to control the use of the property after it has been sold and conveyed by the receiver."

Thus it was that after all these difficulties the distilling interests came clear and, under the name of the American Spirits Manufacturing Company, proceeded upon their way.

Mr. Mayer was as influential as any lawyer in America in bringing about a clear comprehension and acceptance of old principles of trade in application to new industrial conditions. The law was already made long before his day that persons in trade have the right to push it by all lawful means; that, as one man may drive out a competitor by lawful means, two or more may combine to the same ends, using lawful means; that it is legitimate to make contracts with reference to private interests and that persons or corporations engaged in trade have the right to acquire

and possess property and to do with it what they choose, and that combinations which have for their object the realization of a fair price for the product manufactured are not against public policy, even though in some respects they operate in restraint of trade; and that it is not contrary to public policy for two or more rivals to consolidate their concerns. These and other principles Mr. Mayer applied. He lived and was active, not in the very beginning of this new era, but at a time when it was most conspicuous for great organization and when methods of effecting them were in process of being thought out and formulated.

Besides the work of organization of corporations already mentioned, which marked the new commercial era, Mr. Mayer was engaged along the way in a great deal of litigation in which it was sought to have these industrial combinations adjudged to be in restraint of trade; or, stated another way, in violation of Anti-Trust Laws of Illinois or of the Sherman Act. One of his early cases, as it arose in 1891, was that of the *American Preservers Company vs. Bishop,* which is reported in 157 Ill. Rep., p. 284. In this litigation Mr. Mayer appeared as counsel for the American Preservers Company. Bishop was engaged in the manufacture of jellies and preserves and sold his business and plant to the American Preservers Company which had acquired similar businesses and plants from various other manufacturers. Bishop was placed in charge of the plant formerly owned by him. While acting in this capacity, he made the claim that the sale

of his plant and business was illegal and he refused to surrender possession of them to the purchaser, and litigation resulted to recover such possession. The Supreme Court of Illinois upheld Bishop's contention, and refused to give the American Preservers Company possession of Bishop's plant, although he had received and retained the purchase price which had been paid for it. After this decision of the Supreme Court of Illinois, the litigation was transferred to the United States Circuit Court and then to the Court of Appeals for the Seventh Circuit for review. At the same time the case of the *United Breweries Company vs. Star Brewery of Chicago* was submitted, in which Mr. Mayer appeared as counsel for the United Breweries Company. A situation similar to that in the American Preservers Company litigation existed in this litigation between the breweries. The Star Brewery of Chicago had sold its brewery to the United States Breweries Company, which had also purchased various other breweries located in the city of Chicago. Two of the former officers and stockholders of the Star Brewery Company who had been placed in charge of the plant formerly owned by the Star Brewery Company barricaded the plant, surrounded it with armed guards and refused to surrender possession of the plant to the United Breweries Company, claiming that the sale of the plant to the United Breweries Company was in violation of the Anti-Trust Law of Illinois. The American Preservers Company and the United Breweries Company

cases were considered together and the United States Circuit Court of Appeals refused to follow the decision of the Supreme Court of Illinois in the American Preservers Company case and held that a person making a sale of his business to an alleged trust could not retake possession of the property sold and at the same time retain the purchase price received for it. In this connection the Court quoted an observation of Lord McNaughton who had decided a similar case in England in 1894, saying: "There is a homely proverb in my part of the country which says you may not sell the cow and sup the milk. It seems almost absurd to talk of public policy in such a case. It is a public scandal when the law is forced to uphold a dishonest act."

Mr. Mayer was also, in 1907 and later in 1918, representing the theatrical interests in Chicago in respect to the matter of ticket brokers and their right to deal in theatrical tickets. In 1907 he attacked in the Supreme Court a statute intended to prevent ticket brokerage and succeeded in having the law declared unconstitutional. Later, however, in 1918, he failed in an attack on an ordinance having the same purpose as the statute. The questions in the cases are, seemingly, identical; but in the latter case the Supreme Court held the ordinance good, drawing a distinction between the ordinance and the statute which is not easy to perceive.

In 1897 John P. Wilson, one of the ablest lawyers that Chicago has ever known, was the attorney for

the Chicago Sugar Refining Company. Mr. Mayer at the same time was the attorney of some other sugar companies and he collaborated with Mr. Wilson in the organization of the Glucose Sugar Refining Company, by amalgamating under that name the five large manufacturers of glucose in the United States, together with some others. The five large ones were the Chicago Sugar Company, the American Sugar Refining Company of Buffalo, New York, the Ferminach Sugar Refining Company of Marshalltown, Iowa, the Waukegan Sugar Refining Company of Illinois and the Peoria Grape-Sugar Company. Certain of the stockholders of one of the companies which was merged into the Glucose Sugar Refining Company applied for an injunction to restrain the carrying out of the plan of organization and the delivery of one of the plants to the Glucose Sugar Refining Company. Mr. Mayer handled this litigation for the glucose company. It finally reached the Supreme Court of Illinois, where the decision which had previously been rendered in the American Preservers Company was adhered to, and it was held that the combination was against public policy and illegal. In spite, however, of this decision, the amalgamation was successful. It was a case of court law against economic law, and the economic law was too much in harmony with the spirit of the times and the new industrial era to be overcome by the decision of the court which was based upon the doctrine of competition evolved in an earlier day and under different conditions. The final result

of it all was that the Corn Products Refining Company was organized, which took over the Glucose Sugar Refining Company and all the plants which had belonged to the corporations which had been merged in it. Mr. Mayer was the attorney for the Corn Products Refining Company and managed many of its legal affairs to the day of his death. It began to be, and is still, engaged, not only in glucose refining, but also in the manufacture of starch and of many other products which are made from corn.

In 1889 Mr. Mayer organized the American Trust and Savings Bank, and later along the way he attended to the consolidating of various banks into what has become the largest bank west of New York City, namely the Continental and Commercial National Bank. This is the bank into which were merged the Continental National Bank, the Commercial National Bank, American Trust and Savings Bank, the International Bank, the Federal Trust and Savings Bank and the Hibernian Banking Association. This is the practical effect of the matter, though the specific and legal fact is that the stockholders of the National Bank bought the stock of these state institutions. There is, therefore, a stockholder or community control, without a formal consolidation under one corporate head, so far as the state institutions are concerned.

It would be impossible to give a synopsis or even a catalogue of all the cases in which Mr. Mayer took part; neither would it be interesting, if it were done.

To chronicle those of greatest importance and which illustrate the character of his legal ability will suffice. Briefly to speak, he was at one time retained by the State of New Jersey to represent it in the litigation which involved the question whether the State of New Jersey was entitled to preferential payment under the National Bankruptcy Law, with respect to the franchise taxes imposed by the state upon New Jersey corporations which had become bankrupt. The question was decided adversely to the State of New Jersey in the lower courts and in the Circuit Court of Appeals; but, on appeal to the Supreme Court of the United States, Mr. Mayer was successful. Brief reference must be made to Mr. Mayer's part in the great teamsters' strike of Chicago which occurred in 1905. Mr. Mayer formed a corporation under the laws of one of the eastern states, called the Teamsters' Employers Association and, as the rule is that a corporation formed in another state is a citizen of that state, and as the teamsters on strike were citizens of Illinois, the Federal Courts were given jurisdiction in a suit in equity to enjoin picketing and violence on the part of the teamsters. In other words, it was a controversy between citizens of different states. The Federal Court granted the injunction applied for by the Teamsters' Employers Association and later the strike was broken. Notwithstanding the threats of bodily injury and the receipt of many anonymous letters threatening Mr. Mayer with injury and death, he stood by the principles for which he was fighting.

He believed that the employers were in the right and the teamsters in the wrong, particularly in the wrong in what they did to make the strike successful.

From 1900 to the date of Mr. Mayer's death, in the summer of 1922, his professional activities and his public-spirited interests were increasingly multiplied. No lawyer in Chicago, or perhaps in America, was so versatile in his professional and public life. He was managing the affairs of the largest business and banking interests, and was constantly called in to the protection of other commercial or financial institutions which had been attracted to him by his great and growing celebrity. At one time he would be acting for the California Fruit Growers Exchange in its controversy with the railroads, involving the right of shippers to pre-cool fruit before shipment and to ice the same in transit, a function which the carrier claimed the shipper had no right to perform. This sort of professional service would lead him before the Interstate Commerce Commission and into the Supreme Court of the United States, as, in fact, the California Fruit Growers Exchange in its difficulty did take him. At another time he would be acting for the Swan Land and Cattle Company in regard to the rights of its stockholders. At another time he would be appearing as counsel for shippers against the railroads in relation to conditions surrounding bills of lading, seeking to have the bills of lading uniform as to all shippers. At the same time and in the midst of other great activities, he would have time to examine

the ordinances of the city relating to theaters, or to render opinions to the Illinois Manufacturers Association as to the validity of the ordinances governing the Chicago Telephone Company. Keeping his eye upon the commercial expansion of the country, the activities of the railroads, he would be warning them that if they did not amend their ways government ownership would follow. He had, amidst all these duties, to make addresses on the many economic and financial questions that were occupying the public mind at the time, such as the Aldrich Currency Bill, and Senator Borah's proposal to keep corporation lawyers from Congress, of which proposition Mr. Mayer thought that it would be better to apply the exclusion to the State Legislatures.

His devotion to Chicago all the while in no manner abated. He was interested in the Outer Belt Park Act which was pending in the latter part of 1905; and a few years later when the Boulevard Link Plan of Chicago was being discussed, Mr. Mayer proposed that it be left to a referendum vote of the people. His great interests were taking him back and forth between Chicago and New York City almost as often as twice a month and he was frequently in Washington, appearing in the Federal Courts there in behalf of important interests or before the Interstate Commerce Commission or other boards having to do with matters of business and trade. After his connection with the Iroquois Theater litigation, he was more and more drawn into questions which involved the theatri-

cal interests of America. In the summer of 1907 he was in Europe acting for Klaw and Erlanger in the organization of a hundred million dollar corporation which planned to acquire the theaters of Europe and America. In this behalf he made a study of the theatrical situation and rendered many legal opinions on a variety of subjects as they arose while he was prosecuting this gigantic enterprise. All the while from 1902 to 1911, he was identified with the packing interests of Chicago, and in particular in behalf of J. Ogden Armour, the president of Armour and Company. It was during this time that the famous prosecutions of Armour, Swift and others took place, in which Mr. Mayer played a giant's part.

CHAPTER IV

IROQUOIS THEATER FIRE LITIGATION—DEFENSE OF JUDGE GROSSCUP

RANDOLPH Street, from a very early time in the history of Chicago, was a place of restaurants, resorts and gaiety by day and night. It was also a street of tragedy. The Iroquois Theater, which was built in 1903, was located at the north side of the street and almost opposite the spot where the once-famed George Trussell had a livery stable in the middle '60's and in which he lost his life at the hands of a jealous woman on September 3, 1866. He was the owner of the famous trotting horse Dexter which on the very day of the tragedy was trotting at Dexter Park in Chicago, a racing course named for the famous horse. In the old days the *Chicago Times* had its establishment in Randolph Street, between State and Dearborn Streets, and somewhat near the livery stable of Trussell. This particular location at that time was known as "hairtrigger block." By 1903 this part of Randolph Street, and also the block between Dearborn and Clark Streets on Randolph Street, became famous as the Rialto of Chicago. It was bright with restaurants, buffets and theaters. The advent of the Iroquois Theater into the theatrical life of Chicago was a notable event in the city's amusement records. The architecture of the building was a departure from that which had been used previously in the construc-

tion of theaters in Chicago. It was a building much admired at the time; and its construction seemed to be such as to safety and convenience that no one anticipated the incredible tragedy which took place within its walls on December 30, 1903, at a matinee in which Eddy Foy, the well-known comedian, was the star. As there were features of the theatrical program being presented which appealed to the imaginations of children, there were hundreds of children in the audience. At this time the theater was in the control and possession of the Iroquois Theater Company, which was officered by Harry J. Powers, the manager and lessee of Powers Theater, which was located farther west on Randolph Street, and by Will J. Davis, a well-known theatrical manager, whose name was also distinguished by the fact that he was the husband of Jessie Bartlett Davis, a famous singer of her day.

In the midst of the performance some of the spectators observed a spurt of flame on the stage which rapidly ascended the glittering and flimsy scenery being used for the performance. Then a blue, thin mist poured in great volumes over the audience, which was preceded by scarcely detected explosions, then great volumes of smoke followed. The audience was thrown into a panic, and hundreds arose and rushed toward the exits, where scores perished from suffocation or from being trampled. Many others died in their seats and were found as they had been sitting through the performance. At first the report that came out upon Randolph Street and went throughout the city was

that a few people had been killed and injured in the theater. The entrance upon Randolph Street was almost immediately choked with curious and horrified crowds anxious to know exactly what had happened; and among these throngs were many frantic fathers and mothers and brothers and sisters who knew that some of their relatives had gone to the play. As the crowd became dense, traffic was stopped on the street, and the police found much difficulty in managing the onlookers as the bodies began to be brought forth from the holocaust within, and laid on the floors and tables of near-by restaurants. The estimate of those who had lost their lives started at a small number; but every few minutes added to the list. When it reached sixty the street and the city were horror-stricken, but then it began to mount to a hundred and beyond, until it was finally known that five hundred seventy-five people had lost their lives in a few swift minutes in that sudden disaster.

The rage that seized Chicago was beyond description, and the newspaper accounts of the tragedy constantly inflamed the feelings of the people. The impassioned judgment of the public was that somebody was responsible for the catastrophe, and whoever it was must be punished. It was soon known and discussed that the city by its ordinances had imposed upon all theaters a number of regulations respecting exits, fire sprinklers and things of a like character, designed to protect audiences in the exigency of fire. So it was that within a few days after this tragic loss of

life Harry J. Powers, Will J. Davis and a number of the employees were arrested for manslaughter. A few weeks later the coroner's jury, viewing the bodies of those who had lost their lives, investigated the fire and as a result of their deliberations held a number of persons to answer the action of the grand jury. Among them was Carter H. Harrison, who had been Mayor of Chicago since the spring of 1897. Marking him for prosecution clearly showed the embittered state of public feeling, which for the time overwhelmed the judgment of those entrusted with the enforcement of the law. He had not the remotest thing to do with the theater, nor with the conditions which contributed to the loss of life in it after the fire, which had originated in an almost unforeseeable manner. In consequence of these considerations and within a few days after the Mayor had been held to await the action of the grand jury, he was released and discharged from liability on a *habeas corpus* proceeding and was not further proceeded against.

For an understanding of the prosecutions which ensued in respect to the legal questions which were raised by Mr. Mayer with such great ability, it is necessary to have some understanding of the ordinances which covered theaters at the time of the fire, passed in 1897-1899, and which were made the basis of the indictments returned against Will J. Davis, the president of the Iroquois Theater Company, certain employees of the theater and certain officers of Chicago. By these ordinances there were established a

Commissioner of Buildings, a deputy and a secretary to the Commissioner. The Commissioner was to be appointed by the Mayor, and he had the power to appoint subordinates. It was made his duty to enforce the ordinances relating to the erection, alteration and repair of buildings. He was required to inspect theaters and other public buildings and to ascertain their facilities for egress in case of fire; to test the sufficiency of the doors and passage ways for escape, and their appliances for extinguishing fires and for resisting their spread. He was empowered to cause precautionary measures to be taken, and all work, necessary to render a building safe, to be done, and to direct the Fire Department to tear down any defective or dangerous wall, or any building which might be constructed in violation of the terms of these ordinances. He was given power to make rules for the secure erection of buildings and for their careful inspection, and to stop the construction of buildings where they were being erected in violation of the ordinances. One section of these ordinances required that there should be over the stage of every theater a flue pipe of sheet metal construction, which should extend not less than fifteen feet above the highest part of the roof over the stage, and which should have an area of at least one-thirtieth of the total area of the stage. The dampers of this flue should be made of metal and opened and closed by a circuit battery, with a switch placed in the ticket office and another switch near the electrician's office on the stage, each to have

a sign with the words, "Move switch to left in case of fire, to get smoke out of building." Another section of these ordinances required theaters to have a system of automatic sprinklers to be supplied with water from a tank at least twenty feet above the highest part of the roof; and also sprinklers above and below the stage, in the paint room, store room, property room and dressing rooms; all to be approved by the Commissioner and the Fire Marshal and Chicago's Board of Underwriters. These ordinances also required that a diagram of the exits should be printed on the programs distributed among the audience and that there should be signs for the exits, and portable fire extinguishers on the stage. Where any of these regulations were violated by a theater and a report of the violations was made to the Mayor by the Commissioner or the Fire Marshal of the city, the Mayor was empowered to revoke the license of the theater, and a penalty of not less than one hundred dollars a day or more than two hundred dollars a day was prescribed for violation of any of the provisions referred to by any person or persons.

As early as October, 1903, two months before the fire, the Commissioner had begun to agitate a revision of these ordinances; and at about the same time a member of the City Council, responsive to the charge which was then being made in the public press that the downtown theaters were violating the building ordinances, offered an order in a meeting of the City Council providing that further action against theaters

violating these ordinances be stayed until the Judiciary Committee of the Council should report an amended ordinance. This was passed on October 19, 1903. Mayor Harrison had communicated to the City Council on November 2, 1903, the information which had come to him from the Commissioner of Buildings that the violations of these ordinances were so numerous that it was impossible for the city to enforce their observance in all their details without closing nearly all the theaters of the city. He asked that the report of the Commissioner of Buildings be referred to the Judiciary Committee of the Council to assist it in the revision of the Building Ordinance, which was then pending and in progress. These reports and communications showed that the authorities of the city had in mind the conditions and were seeking to cope with the difficulties that surrounded them only a few weeks before the terrible Iroquois Theater disaster.

At this time Chicago had a population of a million and three-fourths. It was growing very rapidly and its building operations were extending almost beyond the power of orderly control. It is manifest from these reports and from the accounts of the Mayor and the proceedings of the City Council that a condition existed in theaters and other buildings which required the careful scrutiny of the authorities. And as these facts became known, public indignation rose over the Iroquois fire and the great loss which it had occasioned. Naturally the public mind did not pierce through the fog and smoke of false rumors and wrath

to the essential matter which was, whether there was any relation as of cause and effect between the conditions in the Iroquois Theater and the fire which claimed so many victims. Stated more particularly, the question which was at the core of the matter, and which was finally solved by the prosecutions, was, whether the failure to observe the requirements of the ordinances was the proximate cause of the loss of life; or, stated with still further particularity, whether, if there had been a flue over the stage, as the ordinances commanded, there would have been no loss of life. These questions were soon tried out in one of the most dramatic legal battles that Chicago ever witnessed, and in which Mr. Mayer, bringing into use all his learning and energy and all the resources of his great law office and its organization, took the leading part. The Iroquois Theater sustained some managerial, if not legal, relation to Klaw and Erlanger, theatrical producers of New York, and Mr. Mayer was assisted in his legal battle by the most adequate power of association and money.

This fire and the attempt to avenge it through the instrumentality of these ordinances and by resort to the common law led to the unearthing of legal riches far beyond what the layman might imagine could be brought forth from a consideration of the circumstances. The legal argument took a very wide range, and Mr. Mayer's printed brief which he used contained two hundred and thirty-one pages, in which every precedent in the English language, apparently,

was cited and quoted for its bearing upon the matter of criminal responsibility. At first a motion was made before one of the judges of the Criminal Court of Cook County to quash the indictment against Will J. Davis. This indictment set out the ordinances already mentioned, and then charged that Davis had omitted to have over the stage a flue pipe, and had failed to have a system of automatic sprinklers in the theater, and had not provided portable fire extinguishers or had not fire pumps on and under the stage. The essence of the indictment was that Davis had committed the crime of involuntary manslaughter, which is the doing of a lawful act in an unlawful manner and in a way which probably might produce the given consequence. Hence the propositions were that the lawful act of constructing and maintaining the Iroquois Theater had been done in an unlawful manner, that is, in violation of the ordinances; and that this unlawful manner of construction and maintenance might probably have produced the deaths which ensued in consequence of the fire.

At the outset, the question was whether or not the ordinances were valid. It is one of the principles underlying the organization of cities, at least in the American system of law, that they, as municipal corporations, can only exercise such powers as have been granted to them by the state, which is the source of authority. In Illinois the only power which has been given to cities, within which it might have been said that Chicago had the legal authority to enact the ordi-

nances in question, merely enabled them to prescribe the thickness and strength and manner of constructing stone and brick and other buildings, and the construction of fire escapes upon buildings. They were empowered to prescribe the limits within which wooden buildings might be erected or placed; and to prevent the dangerous construction and condition of chimneys, fire places, hearths, stoves, stove-pipes, ovens, boilers and apparatus used in places of manufacturers; to regulate the police of the city; to do all acts which might be necessary for the promotion of the health or the suppression of disease in the city; and to regulate the keeping of any lumber yard within the fire limits of the city. The question then was whether or not these powers delegated to Chicago by the state comprehended the power of enacting these ordinances. There were subordinate points such as that one which brought into question the validity of the ordinances on the score of their having deputed to the Board of Underwriters of Chicago the power to approve the sprinkler system which the ordinance required. As to this it was clear enough that the delegation of such power to a civil and not to a governmental body was itself void; and there was sound authority in support of the argument that this portion of the ordinance rendered it void in its entirety. Then there was the question of criminal liability on the basis of common law relating to involuntary manslaughter.

The motion to quash the indictment against Davis was argued by Mr. Mayer before Judge Kersten,

sitting in the Criminal Court of Cook County, with whom was associated, informally, Judge Green of Peoria County. The venue had been changed to Peoria County as to two of the defendants in the indictment, namely Noonan and Cummings, and it was for this reason that Judge Green listened to the arguments in Cook County, intending thereafter to act formally in his own county on the indictment of these two defendants. It is curious now to note in the chronicling of this case the manner in which the minds of judges acted while the storm and stress of this disaster and its echoes reverberated about them; how in a word the processes of analysis seized upon the essential truths involved, undisturbed by the confusion and the sound. Judge Kersten quashed the indictment. After observing that every indictment was required to contain an averment of facts which in law constituted the offense, he went on to say that the indictment did not legally charge that a violation of the ordinances caused the death of the persons in the theater. He showed in fact that it could not be truthfully charged that an observance of the ordinance would have prevented the deaths; and by way of detail that none of the ordinances designated whose duty it was to furnish the equipment, flue pipes and sprinklers mentioned in the ordinances. There was also a subordinate matter of misjoinder, that is, of having made Davis, Noonan and Cummings joint defendants when there was no element of coöperation between them in the production of the result.

On the common law counts of the indictment Judge Kersten pointed out with great clearness that they did not legally found themselves upon the requirements of the city ordinances by averring that the equipments in question were reasonably necessary in theaters for the protection of their patrons; or that such equipments were usually or customarily furnished; or aver any other facts to show that it was common law negligence upon the part of the defendants to fail to provide the equipments specified in the ordinances. He pointed out that the allegations in these common law counts which stated that had the equipments been furnished the fire could have easily been extinguished raised a purely speculative and problematical question and not a factual issue; and that it was an argumentative foundation of the basic and requisite averment that such equipments were in the eyes of the common law reasonably necessary to the safety of the theater patrons.

Judge Green delivered an informal opinion at this time in which he indicated that he would enter an order in the Circuit Court of Peoria County quashing the indictment as to Noonan and Cummings when the matter was later and formally presented to him in his court. He now stated that the ordinances failed to impose any duty upon all or any of the defendants; and, further, that the direct cause of the disaster was not the failure to have in the theater the flue pipe required or the automatic sprinkler, and other appliances specified in the ordinance, but that the direct

cause of the loss of life was the fire itself. And he observed that these appliances were not to prevent fire but to do away with the smoke, in case of fire; and that the switch required to be in the ticket office and to be moved to the left in case of fire, so as to get the smoke out of the building, clearly demonstrated that the appliances related to smoke and not to fire. Outside of these legal pronouncements, it is impossible to omit observing that a flue pipe, duly operated with the switch required, would scarcely have prevented the suffocation of some people in the audience, so quickly did the fire start and the smoke ensue. These holdings were the result of Mr. Mayer's masterly analysis of the law applicable to the case. It was on February 9, 1905, that this ruling was made.

A new indictment was returned against Davis, and its validity was argued by Mr. Mayer before Judge Kavanagh, sitting in the Criminal Court in January, 1906. This indictment contained four counts based upon the ordinances, and two counts, the fifth and sixth, based upon the common law. Judge Kavanagh, in ruling upon the counts based upon the ordinances, later holding that the counts based upon the common law were invalid, used this language:

"Here was a building constructed and arranged in violation of the law, because the ordinances provided that 'no well constructed building or part thereof shall hereafter be built, constructed, altered or repaired within the fire limits of the city of Chicago except in conformity to the provisions of this ordinance,' and

this building was constructed admittedly in violation of the terms of the ordinance. Also some one had offended against the law in its erection, because the penalty clause provided that 'any builder or constructor who shall construct any building in violation of the provisions of this ordinance shall be liable.' There then was a building erected in violation of the law which the defendant desired to use for the purposes of an assembly hall. Granted that there was no obligation upon him either as joint owner, lessee or manager to arrange the theater in conformity with the ordinance had he no further duty in the premises? It seems to me there was a plain one, to wit: an obligation to refrain from using it as a theater; and if he insisted upon so using it, knowing of its unlawfully defective and dangerous condition, did he not come within the direct inhibition of the penalty clause of the ordinance which enacted 'any person, firm, company or corporation who violates, disobeys, omits, neglects or refuses to comply with the provisions of the ordinance shall be subjected to a fine'?"

It was clear that the defendants did not intentionally produce the fire, nor intentionally cause the death of any one. The question was whether they had committed an unlawful act in failing to observe the ordinances, and that such failure was the direct and not the remote cause of the act. Judge Kavanagh took pains to observe the difference between the doing of an unlawful act, which has no direct relation to the death of another, and the doing of an unlawful act

under conditions existing or created by the actor which are dangerous to another. And he reverted to the old case where it was held that to drive a fractious team of mules through a toll gate at a rapid speed without paying the toll fee was an act consisting of two elements, first, the unlawfulness of the act itself in passing the toll gate without paying the fee, and the unlawfulness of the dangerous driving, all the other circumstances considered. Coming to the ordinances and to the charge in the counts of the indictment based upon them, he said:

"Does it require more than the mere statement of this view of the law in question to establish that the natural consequence of an omission to perform its commands will be fraught with danger to life and limb? If, as stated in the Potter case, 'A person engaged in an unlawful act is legally responsible for all the consequences which may naturally or necessarily flow or result from such an unlawful act,' is not the person charged with the duty of supplying fire escapes responsible for the injury caused to persons by reason of his failure to supply them? . . . So it seems to me that under the charges of the indictment, all of which are admitted to be true, that in the view most favorable to the defendant there is a question for a jury to pass upon, and that it is conclusively established that it is for a jury to determine whether his omission to provide the equipment constituted a lack of due caution and circumspection within the meaning of the statute."

But, to prove how judges differ, Judge Landis of the Federal District Court, ruling at a later time upon the civil liability of the Iroquois Theater Company for one of the deaths in the fire, held that the ordinance did not cast on the owner of the theater any duty in reference to the equipment and appliances prescribed in them; and that the ordinances provided only for a fine for the specific failure to have the appliances and not for liability for consequences flowing from the failure to have them.

The indictment as to the ordinance counts having been sustained by Judge Kavanagh, nothing was left but the trial of the defendants. The state of public opinion in Chicago and in Cook County was such that it was probable that the defendants could not have a trial fair and free from prejudice. Consequently Mr. Mayer prepared to have the venue changed to some other county in Illinois. To this end the petition was prepared, signed by thousands of persons who made oath that the state of the public mind was such in Chicago and Cook County that the defendants could not receive a fair trial in that jurisdiction. The labor connected with this proceeding was incredibly great and could only have been accomplished by a man of Mr. Mayer's resources, supplemented by the great organization and facilities of his law office. The petition to change the venue having been presented to the Court in Cook County, the indictment was sent to Vermilion County, Illinois, for trial, the County Seat of which is Danville. And there the trial started on

the second day of March, 1907, with Mr. Mayer at the head of the defense, assisted by William J. Calhoun, then a practicing lawyer of Vermilion County Bar, but subsequently a distinguished lawyer of Chicago and later Minister from the United States to China; and also assisted by Joseph B. Mann, a lawyer of great experience and of notable personality in the legal and political life of Illinois of that time.

After a jury had been empaneled and the first witness had been called to the stand and had answered a few questions, Mr. Mayer requested the court to rule that the prosecution should offer in evidence at once the ordinances upon which the indictment was based, in order that an argument might be made at the threshold of the case as to their validity; and thus to avoid, if the court should be of the opinion that the ordinances were invalid, a long and useless trial taken up with testimony concerning the fire and the other circumstances. It was true that other judges had held these ordinances good; but there was nothing in the decisions of these other judges to control the judgment of the court before whom the indictment was now being tried. And since the jury had been empaneled and one witness partially examined, the defendants had been placed in jeopardy; and if the court should hold that the ordinances were invalid and the indictment bad, no other indictment could be returned against these defendants. The matter was then argued for about a week, back and forth between Mr. Mayer and his associates on the one hand and the prosecuting

attorneys on the other. But Mr. Mayer had too carefully and accurately whittled the question to a point to be overcome in this field. Having argued the indictment twice before on motions to quash, and having ransacked the whole legal literature which bore upon the subject, he was too thoroughly armed to be worsted now. On March 9, 1907, Judge Kimbrough, who was holding the court, rendered an ultimate decision in which he held that the ordinances were invalid and in consequence the indictment had nothing upon which to rest, and so the defendant Davis was discharged. Thus three years and a half after the fire, all attempts to hold Mr. Davis or any one else connected with the theater criminally liable for the fire ended. Along the way and contemporaneously with these prosecutions, over one hundred actions at law for damages were instituted against various persons, among whom were Will J. Davis and Harry J. Powers, Klaw and Erlanger, theatrical producers of New York, Al Frohman, Charles Frohman, Sam Nixon, Fred Zimmerman, John R. Walsh, one of the great bankers of Chicago and at one time the proprietor of the *Chicago Chronicle,* in the city of Chicago. None of these civil cases was ever submitted to a jury and, as already mentioned, Judge Landis in the Federal Court ruled against the liability of the theater company for one of the deaths.

The Iroquois Theater litigation was the beginning of Mr. Mayer's association with the larger and most important theatrical interests of the country and at

one time he represented as counsel practically every legitimate theatrical interest in America. As a result of this association he was requested by Charles Frohman to endeavor to procure a reversal of a decision of the Appellate Court of Illinois which held that an exhibition of a play abroad which had never been printed and circulated as a book, constituted an abandonment in the common law right of exclusive production in America because such production abroad secured to the author the protection of the British copyright laws. Accordingly Mr. Mayer assumed the responsibility of this case and brought it to the Supreme Court of Illinois, and there secured a reversal of the Appellate Court decision. The defendant, Ferris by name, then appealed the case to the Supreme Court of the United States, where in an opinion by Mr. Justice Hughes the decision of the Supreme Court of Illinois was confirmed. The Supreme Court of the United States held that the provision of the British copyright laws prescribing that a public performance was an abandonment of the common law rights did not affect the author's common law rights in America; and that, in spite of the fact that a manuscript drama had been given a public performance in Great Britain, still the author, without copyrighting his play in the United States, had the exclusive right of performance in the United Sates upon the basis of the common law.

Due perhaps to the conspicuous ability with which Mr. Mayer handled the Iroquois Theater litigation, he was called into the defense of one of Chicago's most

distinguished characters. This was Judge Peter S. Grosscup, a member of the United States Circuit Court of Appeals for the Seventh Circuit for a number of years, until the time of his resignation in the year 1912. Judge Grosscup, because of his dominating personality and perhaps particularly because of his management of the street car system of Chicago, through a receiver of his appointment, had been for a long time a storm center. He was a man touched in some particulars with great humanity and with notable generosities, but he had definite economic leanings and his imperial nature brooked no interference. Some time before the year 1907, Mr. Mayer had affronted Judge Grosscup by advising some of his clients to disregard an injunction which Judge Grosscup had issued concerning the street railway properties in Chicago, and after that they were on terms of mere formality until Mr. Mayer came to the rescue of Judge Grosscup in the trouble which involved him in the month of August, 1907.

Some years before his appointment to the Federal Bench, Judge Grosscup and some associates had built an electric railway between Charleston and Mattoon, Illinois, which took the name of the Mattoon Street Railway. He became a director of this company and continued in that office after he went on the bench. On August 30, 1907, there was a head-on collision between two electric motor cars of the Mattoon Street Railway, and sixteen passengers were killed. Inquiry was made by the grand jury of Coles County, Illinois,

into the accident, which resulted in an indictment against Judge Grosscup and his associate directors for manslaughter. Notwithstanding the coolness which had existed between Judge Grosscup and Mr. Mayer since Judge Grosscup's injunction, he called upon Mr. Mayer to defend him against this indictment in the Circuit Court of Coles County. Mr. Mayer promptly and cordially responded, and found himself ready for the contest in the circumstance that he had gone into and mastered the questions involved when acting for the Iroquois Theater and for Davis. On February 29, 1908, Mr. Mayer, having fully argued the case, was victorious and Judge Grosscup was exonerated of liability. This consummation brought forth from Judge Grosscup the following generous letter which in many ways delineates the noble side of his nature:

"My dear Mr. Mayer,

"Forty-eight hours have gone by since we left each other, the trial over. I have had time to think it over quietly. And now that I have done so I cannot go to bed without writing you this line. That prosecution was the sorest thing that has ever befallen me, it touched me where I was the most sensitive. And it dragged in—exultingly it seemed to me—the great trust I hold. I have always felt toward my Judgeship as a bridegroom feels toward the bride—a jealousy almost passionate of its good name. A thousand times less terrible would this wretched matter have been had I gone through it as a plain citizen. No man could

have appreciated this more keenly than I know you did. Your generalship of our case, purely as a case, was masterful. But the delicacy, the thoughtfulness of feeling, the tenderness of it all was brotherly. And I shall always be thankful, deeply thankful, that you found your way to me. For anything in the past that I have done that was wrong I wish to be forgiven. For anything on your part that I thought was wrong to me, I forgive you if there was anything to forgive. I wish henceforth to be your friend; a grateful friend. This much I had to write."

CHAPTER V

DEFENSE OF THE PACKERS

A CURIOUS letter was recently presented to the Chicago Historical Library. It was written by a man named James A. McCall on October 9, 1834, and was addressed to his brother, Simpson McCall, Charlottsville, Canada. It gives a description of the Chicago of 1833-1834. "Almost any kind of business is good here," he wrote. "Wages are high and workmen scarce. It looks like timber, tanning and merchandising are to be the main industries. A friend of mine has bought two lots about twelve miles out and is building a mill on the north branch of the river. When I came here last fall there were only fifty frame houses in Chicago. Now I counted them last Sunday and there were six hundred and twenty-eight. Sometimes four or five new buildings are begun in a day. About two hundred and twelve new buildings are groceries and stores. We have a good many carpenters here now, but there is work enough for as many more. There is no doubt a tanner would do well here. Mr. I. Miller and several more gentlemen of this place want me to start in the tanning and curing business. There is no end of hides here. They fetch them as far as one hundred and sixty miles and sell them as low as three and four cents for green hides and six and eight cents for dry. There are three butcher yards here and as

many as three to six and sometimes twelve cattle killed here in a day."

The most conspicuous of the earliest packers of Chicago was Gurdon S. Hubbard, who was born in Vermont in 1802 and who at sixteen years of age became an agent of the American Fur Company, with headquarters at Mackinac, Michigan. In this capacity he had charge of a crew of voyagers, who in the fur trading season coasted along the west shore of Lake Michigan, bartering with the Indians; and in 1818, when on one of these expeditions, he entered the mouth of the Chicago River, which at that time was no better than a sleepy creek, but in the development of Chicago has become one of the great harbors of the world. Hubbard had a very diversified and interesting career. He saw Chicago, or Fort Dearborn as it was called, when it contained nothing but the stockade which was erected after the Indian Massacre of 1812, and the log house of the Indian trader, John Kinzie, located about a block north of the Chicago River. He was accustomed to make frequent journeys to St. Louis, which was then the important commercial center of the West. In the later '20's he left the employ of the American Fur Company and became a fur trader on his own account, conducting a caravan of fifty pack ponies to the various places where furs were obtainable from the Indians. In 1830 he made Chicago his permanent home and immediately took a leading part in the business and political life of the community and the state. He was elected to the State

Legislature of Illinois in 1832, when the capital was at Vandalia. And later he was a friend of Lincoln, and Lincoln's host on the occasion of his visits to Chicago. His business interests increased with the rapidity with which Chicago itself arose from a village to a small city. He built warehouses and large buildings. He went into the packing business, and in 1835 shipped the first barrel of beef from Chicago. In this business he remained until 1865, surviving for some years after that, having lived to see the beginning of that metropolis which Henry Mayer and his wife beheld when they came from Richmond, Virginia, to the Mid-West.

These were the beginnings of the packing business in Chicago, which in 1900 had grown to such enormous proportions. In 1849 there were one hundred eighty-five recognized slaughter and meat-packing establishments in the United States. In 1899 these had grown to eight hundred eighty-two, and in 1904 to nine hundred twenty-nine. In 1923 there were one thousand three hundred seventy-nine. Chicago, due to her location on Lake Michigan and because of her geographic position in the Middle West, became the great railroad center and market that she is to-day. From the small beginnings depicted in the letter of this early pioneer, the great packing houses of Chicago evolved. In 1859 the business of Morris & Company was founded, and by 1867 that of Armour & Company. Others sprang up, such as Swift and Company, Cudahy Packing Company, Libby, McNeil & Libby,

and the National Packing Company as late as 1903, and some others. In September, 1922, the United States Department of Agriculture issued a bulletin on food and animals and meat consumption in the United States which covered the period from 1912 to 1921. A few figures may be selected from this bulletin for the purpose of showing the business of the packing interests. In these ten years the total amount of live stock slaughtered in the United States was 977,008,-568 and of these 613,856,851 were slaughtered in inspected plants, of which Armour & Company and two others mentioned should be classified. Of the total stock slaughtered in inspected plants, Armour & Company had 16.81 per cent, Morris & Company, 7.76 per cent, Swift & Company, 22.39 per cent, and Cudahy Packing Company, 5.64 per cent.

In the year 1863 Philip D. Armour became the junior partner in a small packing firm at Milwaukee, Wisconsin, which had formerly been known as Plankinton & Layton and, after 1863, as Plankinton & Armour. In 1867 a plant was established at Chicago and in 1869 Simeon B. Armour, a brother of Philip D. Armour established a packing plant at Kansas City under the name of Plankinton & Armour. Michael Cudahy was superintendent of the Milwaukee plant of Plankinton & Armour; and in 1879 Philip D. Armour, accompanied by Michael Cudahy, moved to Chicago. Mr. Cudahy became superintendent of the Chicago plant. In 1877 the firm name was changed to Armour & Company, and Michael Cudahy became a

partner and remained such until 1880 when he withdrew from the firm and organized the Cudahy Packing Company at Omaha. The business of Kansas City was conducted by Simeon B. Armour and Kirkland B. Armour & Son and was incorporated under the name of Armour Packing Company in 1883. The death of Simeon B. Armour in 1889 left the Armour Packing Company without an executive head; and in 1900 the Armour Packing Company, the corporation at Kansas City and Armour & Company, the partnership at Chicago, merged and formed Armour & Company of Illinois, which was incorporated under the laws of Illinois on April 7, 1900, with an authorized capital stock of $20,000,000. This capital stock was increased to $100,000,000 on October 17, 1916. The business of Morris & Company was incorporated under the laws of Maine on October 19, 1903, and the National Packing Company was formed in 1903 and was financially affiliated with the Drovers National Bank, a financial institution in the southern part of Chicago and in which Edward Tilden, one of the defendants in the packers prosecution, was assistant cashier, as early as 1883. He was afterwards treasurer of Libby, McNeil & Libby, one of the packing plants of Chicago. This was in 1897; and he became president of that corporation in 1902. In addition to Tilden, the defendants were Edward F. Swift, who was vice-president of Swift & Company; Charles H. Swift, its second vice-president; Louis S. Swift, its president; Edward Morris, president of Morris & Company; Thomas J.

Conners, who was of the executive board of Armour & Company; Arthur Meeker who was also a member of the executive board of that company; Francis A. Fowler, beef manager of Swift & Company; Louis H. Heyman, beef manager of Morris & Company, and J. Ogden Armour, president of Armour & Company. He was the son of Philip D. Armour who founded the business.

As Mr. Mayer was the personal attorney of J. Ogden Armour in his many large business interests in Chicago and elsewhere. It was Armour that Mayer specially defended in the great litigation in which the other packers were involved. And, as the issues were the same as to all, Mr. Mayer's work redounded to the benefit of all of them.

Big business had been unfolded in commerce and steel, sugar, coal, beef, lumber and manufacturing ever since the days of the Civil War. There had been much talk all along the way of privilege and monopoly and a growing dread of business institutions, merely because they were large, and without reference to their practices or their actual powers as monopolies. The Granger movement had swept the country in 1872. This was followed by the Populist Party. In the midst of it came the success of Grover Cleveland who directed his attention to tariff reform as a means of correcting the abuses of special privilege. After his first administration came the success of the protective tariff principle; and it was at this time that the McKinley bill was enacted. Senator Sherman of Ohio

brought forward a law for the discipline of monopolies and the prevention of contracts in restraint of trade. Because the high-tax act, known as the McKinley Tariff, was denounced as a breeder of monopolies, the Sherman Law was enacted to prevent the consequences of high tariff, as predicted by its enemies. It may serve the clearness of the brief synopsis of these days to state that the Sherman Act penalized any one who should monopolize, or attempt to monopolize, any part of the trade or commerce among the several states or with foreign nations. It further made illegal every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several states, or with foreign nations. And it provided for a fine of $5,000, or imprisonment not exceeding one year, or both, for any violation of this law. It was under the Sherman Act that the packers were prosecuted.

The Bryan nomination and campaign of 1896 were the result of post-Civil War conditions and were the historical continuation of the agrarian movement of 1872. Although the campaign of 1896 chiefly centered upon the proposition of Free Silver, it also had a great deal to do with the matter of monopolies or the trusts. It was a bitter campaign and many things were said in accusation of the managers of the Republican campaign, as to the source of their political funds. It was charged freely that the Republican party was financed by the trusts. Though Bryan was defeated, these distressing questions were habitually agitated

for many years. The magazines were filled with articles about the Standard Oil Company, the steel trust, the sugar trust and the packers' trust. To use the expression of Theodore Roosevelt, which he took over from Bunyan's *Pilgrim's Progress,* it was a day of industrial "muckraking." The public mind settled to a state of inveterate suspicion of the great business interests of the country. Roosevelt, as President, largely fell in line with the current of the day, although later he tried to allay the agitation and attempted to swing belief to his discrimination between the good and the bad trust. It was out of this condition of affairs that the packers, in the persons of the defendants who have already been named, were brought to the bar of the Federal Court in Chicago. A chronology of the ten years' fight against the packers, commencing in May, 1902, and ending in March, 1912, is as follows:

May 10, 1902—Petition filed seeking injunction restraining packers from maintaining combine.

May 27, 1902—Judge Peter S. Grosscup granted restraining order prohibiting packers' combination.

February 20, 1905—Department of Justice began gathering evidence against Chicago packers.

March 22, 1905—Special federal grand jury called to hear evidence of packers' combination.

July 1, 1905—Sixteen packers and four packing corporations indicted for violating the Sherman Anti-trust Law.

December 31, 1905—Cases called for trial before Judge Humphrey of the United States District Court.

March 21, 1906—Judge Humphrey dismissed packers, granting the famous "immunity bath."

March 21, 1910—National Packing Company indicted and suit begun demanding dissolution of concern.

June 24, 1910—Indictment quashed by Judge Landis and new investigation ordered by the court.

July 14, 1910—Federal grand jury impaneled with instructions to hear evidence concerning packers.

September 12, 1910—Indictment returned against ten Chicago packers.

November 19, 1910—Packers granted change of venue by Judge Landis on statute made in 1792; Judge Carpenter designated as trial judge.

December 7, 1910—Packers filed bill asking that criminal suits be held in abeyance until civil action was decided.

December 17, 1910—Supplemental indictments returned against the ten packers.

January 3, 1911—Judge Kohlsaat permitted government to dismiss civil suit for dissolution.

January 10, 1911—Judge Carpenter denied packers were "immune" under Judge Grosscup's injunction of 1903.

January 19, 1911—Packers filed motion to quash indictment and a plea in abatement.

March 22, 1911—Judge Carpenter held indictment bills valid and refused motion to quash indictment and plea in abatement.

March 27, 1911—Demurrer to indictment filed, attacking constitutionality of Sherman Act.

May 12, 1911—Demurrer overruled.

June 3, 1911—Packers demanded rehearing on demurrer, citing Standard Oil and American Tobacco case decisions.

June 19, 1911—Rehearing denied by Judge Carpenter.

June 23, 1911—Demand by packers for bill of further particulars denied.

July 5, 1911—Packers appeared before Judge Carpenter and pleaded not guilty; trial set for November 20.

November 14, 1911—Packers surrendered to the United States Marshal and demanded release by Judge Kohlsaat on habeas corpus writ; attacked constitutionality of Sherman Act.

November 18, 1911—Judge Kohlsaat threw habeas corpus proceedings out of court; gave packers two days' respite, postponing trial before Judge Carpenter to November 22.

November 21, 1911—Packers took appeal from Judge Kohlsaat's decision to United States Supreme Court and obtained four days' continuance in which to apply for a stay order.

November 23, 1911—Refused stay of trial by Chief Justice White of United States Supreme Court, who referred the packers to the entire Supreme Court Bench.

November 24, 1911—Given stay until December 6 by Judge Carpenter, in which to appeal to the entire Supreme Bench for supersedeas writ and enlargement on bail.

December 5, 1911—Stay of trial refused by Supreme Court; decision of constitutionality of Sherman Act held in abeyance.

December 6, 1911—Trial of the ten Chicago packers began before Judge Carpenter.

March 7, 1912—Counsel for packers make motion to take case away from jury; arguments last four days.

March 12, 1912—Judge Carpenter overruled motion to take case away from jury.

March 14, 1912—Counsel for packers announced that the defense rested without putting any witnesses on the stand or introducing evidence.
March 18, 1912—Arguments begun before the jury.
March 25, 4.40 p.m.—Case went to the jury.

At the time that these prosecutions were inaugurated, there was an attempt to enforce the Sherman Act to the letter, wherever an effort was made to enforce it at all. Prosecutions were not conducted on the basis that an unreasonable restraint of trade, or restraint of trade leading to monopoly, or to unfair competition was illegal; but that every contract or conspiracy in restraint of trade was illegal. Mr. Mayer, fortified as he was by great experience and by diverse contacts with trade conditions and the laws relating to them, insisted that the literal words of the Sherman Act could not be the law. It was not, however, until 1914, that Mr. Taft, in his book entitled *The Anti-Trust Act and the Supreme Court,* took the position which had been earlier defended by Mr. Mayer. In that book he wrote:

"The object of the Anti-Trust Law was to suppress the abuses of business of the kind described. It was not to interfere with a great volume of capital which, concentrated under one organization, reduced the cost of production and made its profits thereby, and took no advantage of its size by methods akin to duress to stifle competition with it. . . . Mere bigness is not an evidence of violating the act. It is the purpose and not the necessary effect of controlling prices and putting

the industry under the domination of one management that is within the statute."

But, while the prosecutions against the packers were pending, the Supreme Court of the United States, in 1910, decided the Standard Oil Company case. There it appeared that, from about the year 1870, commerce in crude and fine oil, and the products thereof, had been monopolized. The Standard Oil Company was proceeded against, not only because it had combined into itself various corporate entities, but because it had resorted to unfair practices, such as rebates, preferences, control of pipe-lines, local price-cutting, espionage, operation of bogus independent companies, and a great variety of other unfair and illegal acts. So it was that the Supreme Court found that it was an unlawful monopoly. Still the opinion of the court, delivered by Mr. Justice White, took the pains to say that:

"The statute . . . evidenced the intent not to restrain the right to make and enforce contracts, whether resulting from combination or otherwise, which did not unduly restrain interstate or foreign commerce, but to protect that commerce from being restrained by methods old or new which would constitute an interference, that is an undue restraint."

He observed that the law did not touch the freedom of the individual or the corporation to make contracts when that freedom was not unduly or improperly exercised. This was the beginning of that plain enunciation of what has come to be known as the rule of

reason, more clearly and definitely expressed in the American Tobacco Company case of 1919 and the United States Steel Corporation case of 1919. In the latter case the Supreme Court held that an industrial combination, short of a monopoly, is not objectionable under the Sherman Act, merely because of its size or because of its capital and power of production, or merely because of a potentiality to restrain competition, if it be not exerted.

The array of counsel, both of the government and the defense, was numerous and distinguished. James H. Wilkerson, at present one of the Judges of the Federal Court for the Northern District of Illinois, W. S. Kenyon, at the time United States Senator from Iowa; also Pierce Butler, at the present time one of the Judges of the Supreme Court of the United States, beside James M. Sheehan, a lawyer of conspicuous experience and ability, represented the goverment. For the defense, in addition to Mr. Mayer, were the regularly retained lawyers of the packers, and also John Barton Payne, a lawyer of persuasive personality.

Always in such cases, questions arise to mar harmony of consultation and coöperation, and a rivalry may produce jealousy and discord. The packers' case was not free from these passions and, to say the least of it, some of the lawyers for the defense did not agree with Mr. Mayer's policies from time to time in the conduct of the defense; although he had his way pretty much, even if he did not have the sustaining

influence of the entire coöperation and approval of his associates. He believed that the Sherman Act was unconstitutional and he tried to reduce the controversy to that single consideration. Hence it was that, in November, 1911, he sued out in behalf of the defendants a *habeas corpus* in the Federal Court for the purpose of testing the foundation upon which the prosecutions rested. It was necessary in the *habeas corpus* proceeding that the defendants had to be in the custody of the United States Marshal before they could apply for the writ of *habeas corpus* to be relieved of the restraint of such custody. After the *habeas corpus* was applied for, the attorneys for the government, resisting the application, filed a motion to quash the *habeas corpus* writ, in which they set up the matter of fact that the defendants were not imprisoned or restrained of their liberty. The motion further contained the statement that the petition was not presented in good faith, but for the purpose of delaying the trial of the packers before a jury. These questions therefore were argued as much on the *habeas corpus* proceeding as the main matter was argued on the constitutionality of the Sherman Act. In regard to the matter of delay, Mr. Mayer said, addressing Judge Kohlsaat, who was hearing the *habeas corpus* proceeding:

"Who is seeking delay in this case? If we go to trial on the facts in the regular way, it is conceded by both sides that it will take from three to six months, and if the defendants win, the government cannot appeal.

If the defendants are convicted, their appeal must go to the Circuit Court of Appeals and cannot get there until October, 1912, at the least. It is not fair to assume that the Court would render an opinion until April, 1913. I feel justified in saying that the trial and disposition of this great issue will take certainly as long as did the Standard Oil case. Who is seeking delay? We who are prepared, if Your Honor sustains the contention of this case, to carry it to the Supreme Court? I suggest for your Honor's contemplative reflection that this motion of the government to quash is not calculated to facilitate but to obstruct and hinder, to continue to wield the club of Hercules to the terror of merchants and manufacturers of the country. I ask the government to join hands with us and let us get this case into the Supreme Court for settlement. It was that learned judge who is now the President of the United States, who said: 'To leave it to the courts to determine whether a restraint is reasonable or unreasonable would involve the judiciary in disaster.' Never in the history of jurisprudence until this time has it been necessary, and I hope never again will it be necessary, for a court to condemn a statute like this, blind in purpose and utterly unintelligible to all who seek to ascertain its meaning."

As shown in the chronology, Judge Kohlsaat threw the *habeas corpus* proceeding out of court, but gave the packers two days to prepare for the trial before Judge Carpenter. The packers took an appeal to the Supreme Court of the United States from Judge

Kohlsaat's decision, and a few days' respite was granted to give the packers opportunity to apply to the Supreme Court for a stay order. The stay was finally refused by the Supreme Court on December 5, 1911, and on December 6, 1911, the trial of the defendants before Judge Carpenter and a jury commenced.

On the very day that Judge Kohlsaat ruled on the *habeas corpus* application, one of the Chicago newspapers contained the news of a new anti-trust act, which Representative Henry of Texas declared he would introduce in the House of Representatives on the opening of Congress in December, 1911. Some of Mr. Henry's remarks may be quoted here in exposition of the psychology of the hour which surrounded this notable trial in Chicago. Mr. Henry was reported in the newspapers to have used these words:

"My bill nullifies the alterations written into the Sherman Anti-trust Act by the unwarranted and purely gratuitous decision of the Supreme Court in the Standard Oil and Tobacco Trust cases of last spring. That is, the bill legislates the rule of reason out of the law and it defines specifically what a trust is, so that there can be no room for controversy. It makes the violation of this law a felony, with imprisonment for not less than two years and not more than ten years. Fines and dissolutions seem to be child's play for the trust magnates. Felon stripes where the violation is knowingly or wilfully done will prove a potential remedy for these flagrant acts of commercial out-

LEVY MAYER ARGUING THE PACKERS' CASE

laws. The Chinese anti-trust law provides, 'Those who interrupt commerce are to be beheaded.' To behead such offenders in our country would be too extreme, but to compromise with a penitentiary sentence and a felon's stripes as a punishment is mild and should be administered to trust criminals in the United States. My bill justly exempts members of organizations and associations not for profit and without capital stock, and also agricultural products or live stock in the hands of producer or raiser."

A matter of two weeks was consumed in the selection of the jury. For the information of those not familiar with legal proceedings it may be said that a Federal Court draws its jurymen from the entire district; in consequence of which the jurymen who were examined and finally accepted for this trial came from various parts of Illinois in the Northern District which were located outside of Chicago and even the County of Cook. Prosperous farmers and business men of the smaller cities were likely at this time to view the matter of the trusts and the issues involved in this prosecution with somewhat different eyes than jurymen would whose experience in business and in life were confined entirely to a great city like Chicago. Finally, however, when the jury was selected and sworn, it appeared that there were three farmers on the jury, men of fair means and prosperity; one inspector of an independent telephone company of Streator, Illinois, a small city about ninety miles from Chicago; one baker; one president of a tailoring firm;

one clerk; one town clerk of a village; one salesman of a wholesale drug house, and one groceryman; one carpenter foreman, and one cable splicer. The oldest man on the jury was sixty-two years of age and the youngest twenty-eight. There were two men fifty-eight years of age, one fifty-two, one fifty-three, one fifty-four, one forty-two, one forty-three, one forty-five and one forty-six. The average age of the jury was fifty years and a fraction. On December 19, 1911, the business of offering evidence before the jury was begun. Before the testimony was finally completed, five million words had been spoken by witnesses and heard by the jury and reduced to shorthand and transcribed with a typewriter for the use of the attorneys. It is impossible out of so gigantic a record to give more than the briefest outline of the evidence and its tendencies. Certain witnesses had been granted immunity to tell what they knew about the operations of the packers. It appeared that as early as 1902 an attempt had been made by the packing interests of Chicago to effect a world combination of the packing industry and that representatives of the packers had gone to New York for the purpose of negotiating a loan of $90,000,000 through Kuhn, Loeb & Company in order to effect this titanic combination. Because of the financial strain at that time, this loan was never consummated. When it failed, certain of the packers who had been willing to enter into this combination declined to pursue the matter further and withdrew from the plan intended to effect it. A year later, in the fall

of 1903, some of the packers went to New York and borrowed $15,000,000 with which the National Packing Company was incorporated, already referred to as having been presided over by Edward Tilden. There was testimony to the effect that the packers attempted to purchase control of the Sulzberger Packing interests by secretly buying the stocks of Sulzberger Company. This was blocked by its president who heard of it while in Europe and returned in time to defeat the plan. There was testimony showing how the packers kept track of the amount of meat shipped to various points in the country, to which end the United States was divided into territories. The packing firms were known by letters of the alphabet and references to their operations were made in correspondence and otherwise by using these cryptic symbols. In the agreement so much trade was assigned to each packer for each territory; and if one packer shipped into a certain territory more or less meat than allotted according to the agreement between the packers, the company so violating the rule was penalized. There was testimony that the packers held weekly meetings in the offices of one of the attorneys for one of the packers, and that these meetings were finally adjourned to the homes of the packers when it was discovered that operators of the Department of Justice were watching the offices. There was testimony explanatory of the prices fixed for beef and other packing products; and it was shown that the various branch managers of the various packing corporations

were obliged to telegraph daily their respective sales to the offices of the National Packing Company. The system of bookkeeping of the various packing corporations and of the National Packing Company was brought out before the jury fully and in detail. There was testimony to the effect that Swift & Company, Morris & Company, Armour & Company and the National Packing Company controlled the killing and dressed-beef industry of the country.

A reporter of the *Times* gives this description of the court room and the principal actors in this legal drama on one of the typical days of the trial:

"But while we have been following Mr. Veeder through the details of the old beef pool, the court room has been filling. In the end seat at the prosecutor's table sits United States Senator Kenyon of Iowa, consulting counsel for the Government. Though he has just turned the middle mile post of forty years, though his hair is just beginning to be tinged with gray, though his keen features are still young and his manner youthful, he already has behind him a distinguished career as lawyer and judge and Government counsel. The dapper young man with whom he is talking is United States District Attorney Wilkerson.

"And now, unnoticed, the jury has filed into its seats at the side of the room. The jurymen are evidently impressed with the importance and the dignity of the duty imposed on them. They are all dressed up. At the start they sit in more or less constrained and

awkward attitudes. On these twelve rests the decision as to whether or no the Beef Kings go to jail or be fined. One has been a grocer all his life in a tiny hamlet of fifty people; three are farmers; there is a carpenter, an insurance solicitor, a grocer's clerk, a millwright, a drug salesman, a telephone inspector, and a baker. The most prominent is president of a merchant tailoring company.

"The joint wealth of the panel is estimated at perhaps $100,000. J. Ogden Armour alone is credited with a fortune of $100,000,000. Whatever the outcome of the trial, each of the jurymen will have a subject of conversation for the rest of his life.

"The fat bailiff stands up in his brass buttons, and everybody in the court room rises with him.

" 'Hear ye! Hear ye!' he intones. Out from his chambers onto the broad platform behind the bench walks Judge Carpenter, a tall, well-built man in his early forties, with a smooth-shaven, rather stern face, his eyes looking out through gold-rimmed spectacles. He bows the bar, the defendants, and the spectators to their chairs, then seats himself, leans forward to the bench and rests his chin on his hand, his fingers partly concealing his mouth.

"Judge Carpenter is a Harvard man, who is just ending his second year on the Federal bench. He had before that some years of experience as a judge of the State courts. The trial of the beef packers was transferred to his court by Judge Kenesaw Mountain Landis, his neighbor across the rotunda, famous for the

fine of $29,000,000 he imposed on the Standard Oil Company.

"As Judge Carpenter seats himself the jurymen settle back patiently into their chairs. Then, just as Levy Mayer rises to address the court, the swinging doors open and a small man, carrying his black overcoat over his arm, comes in and slips quietly across the room. There is nothing about him to attract attention, but as he nears 'Packers' Row' three or four men rise to offer him a chair. Plainly this is a personage of importance who deserves a closer inspection. He is a short, rather slender man, nearing fifty years in age. His brown hair begins to grow thin, his shoulders are a bit stooped. He whispers behind his hand to a man who leans forward eagerly to listen. It is J. Ogden Armour, president of Armour & Company, president of the Fort Worth Stock Yards Company, director of the Armour Car Lines, Armour Grain Company, Chicago, Milwaukee & St. Paul Railroad Company, Continental National Bank, National Packing Company, Northwestern National Insurance Company, Illinois Central Railroad Company, National City Bank of New York, Kansas City Railway & Light Company.

"Gossip says that originally the custody of the great packing business was intended for his brother Philip, and that J. Ogden's primal tastes were more artistic and literary. But when Philip and his father both died J. Ogden took the place of power. He has

greatly increased the widespread business interests left by his father.

"The corporation of Armour & Company alone has total assets which are estimated at $125,000,000. Nor are the other great packing companies far behind. Swift & Company, with Louis F. Swift as president of the corporation, measures up $115,000,000 in assets; Morris & Company about $50,000,000 and the National Packing Company nearly as much more. Such are the men whom the Government is trying to send to jail."

When the government had finished its last witness and the time had come for the packers to introduce evidence in their defense, Mr. Mayer, clearly perceiving that none of this testimony was dangerous to the defendants, if the rule of reason which had been announced by the Supreme Court of the United States in the Standard Oil Company case were applied, took the firm stand that the defendants should offer no testimony, but, if compelled to do so, should rest their case with the jury upon the evidence which the government had adduced. He contended with his associates that the packers had committed no act and had made no contract which operated to the prejudice of public interest in unduly restricting competition or unduly obstructing the due course of trade. His associates were not nearly so clearly-minded upon the subject as he was, but after a good deal of spirited argument and consultation, Mr. Mayer elaborately argued the motion before the court for a directed verdict of not

guilty. "These defendants," said Mr. Mayer, addressing the Court, "have been the object of political, legislative, communistic and socialistic attacks. When all suspicion and guesswork are eliminated, there is no proof that these defendants purposely and consciously violated the Anti-Trust Statute. And, without the evidence, is the Court going to suspect these defendants made the prices at which beef was to be sold, or restricted the shipments? There has been evidence of an exchange of information among two or three of the defendants. But where is the criminality of this? If the commerce of the country is to be regulated by indictment and merchants are to be threatened by indictment because they have done what is shown to have been done here, I think it is time the business men of the country should know it. These defendants met weekly, according to the evidence, in the offices of the National Packing Company, and discussed their business. They were directors of that company, and surely every man has the legal right to talk about his own business. The exchange of margins, similarly-tested cost methods and weekly meetings are not criminal acts and the government cannot hope to convict these men for violating the Sherman law for doing these things."

The court overruled the motion and directed the packers to proceed with their defense. The packers, following Mr. Mayer's advice, offered no evidence and, after many motions made respecting the elimination of documents and specific pieces of testimony,

seeking to have them stricken from the record, the case went to the jury. The District Attorney was very confident of the result as the jury filed into their room to consider the verdict. According to the press of the day, he declared that a verdict of not guilty was impossible and that there was bound to be a conviction. The jury retired at 4.40 in the afternoon on March 25, and the next morning filed into court with a verdict of not guilty, which was a holding that the packers had not formed a monopoly of unreasonable restraint of trade. Comments of individual jurors, drawn out by industrious reporters, showed that the jury believed that the price of meats had been controlled by supply and demand, and that the packers could not have fixed the price to suit themselves. According to newspaper report, the jury believed the testimony to the effect that the packers met weekly to fix the price of meats, as they were charged with doing in the indictment; but they did not consider it important.

Thus, after ten years of battle and after a trial in which more than 1,400 exhibits had been introduced into the record for the government and 100 for the defense, and after forty-nine witnesses had testified and after a cost for these proceedings of $500,000 for the packers and $100,000 for the government, the whole matter ended, to arise, however, in a different form and forum some years later.

CHAPTER VI

WAR-TIME PROHIBITION AND THE EIGHTEENTH AMENDMENT

MR. MAYER'S professional identification with the distilleries brought him into many situations of championship and defense concerning the property and other rights of the liquor interests. It may be said in passing that the saloon, which gradually became anathema, lost its reputation through two things, one of which was its excessive reaction to the social and legal pressure which was brought upon it, causing it in turn to fight back, and not always with the utmost nicety; and the other was the traduction to which the saloon was subjected in the press. The fight against the saloon at first concerned itself with the matter of license, and with the regulations under which liquor might be sold and the penalties for the non-observance of the regulations prescribed. There was a time long prior to the Great War and War-time Prohibition when high license was considered the solution of the so-called "saloon evil," and it was then urged that if a license fee for the running of a saloon were high enough the tendency would be to diminish the number of saloons and to elevate, by a process of selection, the character of those who ran saloons. This theory did not work because the tax was taken from the consumer who was glad enough to pay it, and business went on without

serious interruption. There were other laws against the saloon which belonged to this early era in the agitation of prohibition. Laws were passed making the owner of the building liable in certain instances for the acts or omissions of the saloon-keeper occupying the building; and saloon-keepers themselves were held responsible for loss of life or injury accruing to another in consequence of intoxication. The courts in construing the words "consequence of intoxication" forgot the principle of proximate cause in holding many results to be in consequence of intoxication which were clearly the product of other things. It was this war made upon the saloon that drove the saloon to enter politics to defend itself, and which caused it to resort to organization and the lobby to combat the incessant onslaughts which were made in the various legislatures, year by year, as they came into session. That the saloon was a benign and social institution, and that most of them were orderly and well kept, are matters that are beginning now to be appreciated as the mania of the persecution which followed them has subsided, and a clearer intelligence is used in appraising them for what they were. During Mr. Mayer's professional life he was engaged in protecting these institutions, and he brought to the task a clear conception of liberty and fundamental rights. He saw that the American mind in action has a tendency to go off half-cocked, and that America's law-making furor is too much motivated by hasty judgment formed by shallow propaganda. The economic doc-

trine of "leave alone," which he applied with such singular force to great interests, he also sought to raise in behalf of personal liberty. Along the way of the prohibition movement he had to deal with the campaign which was waged by fanatics in Chicago for the closing of the saloons on Sunday. There was a statute in Illinois requiring the saloons to be closed on Sunday; but in some places in Illinois, particularly in the great population center of Chicago, this statute had been repealed by prescription, that is, by the habitual attitude of the people toward it. Gardens where drinks were served and where orchestras played were places of great resort by the cosmopolitan population of the city; and the saloons kept open on Sunday to serve the care-free, bent on the diversions of this day of exemption from toil. In the prosecution of this Sunday-observance campaign, scores of saloon-keepers were arrested. They simply called for a jury and admitted that they had kept open on Sunday and that the law in question had lapsed by non-observance and custom. These juries invariably held that the law was a dead letter and freed the saloon-keeper. At last the Sunday-closing campaign fell ignominiously into defeat. These cases were tried by Mr. Austrian, Mr. Mayer's partner, with singular ability; but the results showed not only the liberal virtue of the jury system, but the attitude of sovereignty in the mass as well.

Perhaps only lawyers themselves engaged day by day in the business of a great and diversified law practice can fully appreciate the enormous amount of

labor which Mr. Mayer had always accomplished and the still greater work he was doing during the period of the Great War, treated in another chapter. He not only had the daily care of great industrial and financial interests, but he was actively engaged in the most loyal and enthusiastic way in the support of the government in the war. As always, he was much in the courts, representing large corporations and interests; he was making speeches on matters of the war and other subjects; and by reason of his representation of the liquor interests he was drawn into litigation of a semi-political character. At this busy and onerous period of his life, in the spring of 1918, he was called upon to oppose the dry interests in their petition to put the saloon question to a vote in the city of Chicago. Only by his great ability and power and years of discipline, together with the assistance which he had from an unexampled law force in his office, could he have carried on this tremendous labor. In respect even to this petition, great labor was required to successfully combat it. It was presented to the board of Election Commissioners, and Mr. Mayer, after having the list of names upon it checked, found that more than fifty thousand of them were without legal standing. His charges against the petition were that thousands of names were bought and paid for at the rate of ten cents a name; that thousands were copied from the telephone and city directories, and were deliberately bogus; that these corrupt and irregular practices were carried on by Dry leaders, with knowledge that they

were corrupt and irregular; that Dry leaders and workers had deliberately represented to persons signing the petition that it was intended to present the question of Woman Suffrage, or some other issue not actually covered by the petition. The Board of Election Commissioners cut thousands of names from the petition. The matter was presented personally by Mr. Mayer, and the usual acrimony between the Wets and Drys was actively excited, with certain ministers denouncing Mr. Mayer and with Mr. Mayer paying his compliments to them. As an aftermath of the matter, the grand jury took a hand and indicted eight circulators of the petition. The drastic investigation which Mr. Mayer directed toward the petition caused it to be thrown out and the question was not presented to the voters.

But the Great War furnished the psychological moment for the success of a movement which hitherto in national politics had made but an insignificant impression. The National Prohibition Party for decades had put a presidential ticket in the field and had never polled as many as 260,000 votes. In 1888 when the country had a population of sixty-two million people, its vote was 250,125; in 1916, when the population was over one hundred millions, its vote was 220,506. Its highest vote was in 1904, when the Democratic Party broke through the weakness of Parker and the strength of Roosevelt, and many interested in important economic issues threw their votes to the prohibition candidate, Swallow—a leader with an ironic

name—and to cap the futility of the Democratic campaign. The war broke the intellectual stability of the country; it confused its judgment; it inflamed the emotions which swept the will of the people, who in normal times would not have yielded to the measure which involved the placing of a purely municipal regulation in the hands of the Federal Government, and which removed from the states the cherished and inestimable police power. Patriotic emotionalism was brought to such a state of frenzy and even to insanity that any foolish suggestion which had a patriotic color did not fail of consideration; and there was danger that if any proposal was resisted or criticized, no matter how foolish, such resistance might be ascribed to a lack of loyalty. In particular any one would have made himself liable to misunderstanding who had resisted the suspension of the sale of liquor during the tragic days when the resources of the country were directed against the power of Germany and all that that power was popularly understood to mean of evil and disaster to the world. The fact that the large brewing interests were in the hands of men bearing German names gave the fanatics who used the war spirit a tremendous advantage over the forces of sanity. Fanaticism found terrible weapons to use against a defenseless minority, which, to keep itself above the suspicion of hypocrites and madmen, was compelled to accede to the proposal of sacrificing beer and wine for the sake of the boys who were in the trenches. The boys returned to find their beer and wine

gone without their consent; and to denounce the false and unnecessary economy which abolished them in order to win the war.

But while on the one hand ordinary self-sacrifice in such a time would have gladly surrendered the enjoyment of beer, wine or spirits, on the other hand no one could successfully contend that the Federal Government, in the exercise of its war power, did not have the right to abolish the saloon, or any other business, subject only to certain constitutional limits and restrictions which had always in such cases been observed before this.

The War Prohibition Act was introduced on May 6, 1918, something more than a year after the war had commenced, and it did not pass and become a law until November 21, 1918, or ten days after the Armistice. That is, the war was at an end when the law was passed, and the law itself provided that it should not go into force until June 30, 1919, or, in other words, more than six months after the Armistice, and end of the war. Yet this law read: "For the purpose of saving the man power of the nation and to increase efficiency in the production of arms, munitions, ships, food and clothing for the Army and Navy, until the conclusion of the present war, and thereafter until the termination of demobilization, the date of which shall be determined and proclaimed by the President of the United States." The case in which Mr. Mayer attacked the constitutionality of this law was *Hamilton, Collector, vs. Kentucky Distilleries and Ware-*

house Company, in the District Court of the Western District of Kentucky. He was successful in annulling the law in the District Court; but the Collector took an appeal to the Supreme Court of the United States, where Mr. Mayer, with whom was associated William Marshall Bullitt, in oral argument and in written brief attacked the constitutionality of the law with devastating analysis.

The facts in the litigation were briefly these: The Kentucky Distilleries and Warehouse Company had for more than four years prior to the autumn of 1919 owned more than 15,000 gallons of whiskey, on which it had paid a tax of $6.40 a gallon, or a total tax of $102,169.60, and of which $6.40 a gallon, $3.20 was required to be paid as late as September 24, 1919, under the increased tax law of February 24, 1919. It also had 22,157 barrels of whiskey containing more than a million gallons and costing more than a million dollars, upon which the internal revenue tax had not yet been paid. In October, 1919, the company had tendered to the Collector of Internal Revenue the sum of $132,331.52, which was tax upon 534 barrels of whiskey, and sought to withdraw it from bond in order to sell it in the United States for beverage purposes. The Collector refused to receive the tax money so offered him and refused to permit the withdrawal of the whiskey from bond. Whereupon the suit in question was filed to compel the Collector to accept the tax and to compel him to allow the withdrawal of the whiskey from bond. The decree was rendered in the

District Court in favor of the Kentucky company, and the government, as already noted, took the case to the Supreme Court.

The War-time Prohibition Act having on the one hand forbidden the withdrawal and the sale of this whiskey, and on the other hand having failed to award any compensation for the destruction of such property and the property right to sell, left itself open to the charge that it had deprived the Kentucky company of its property without due process of law. It was not claimed that the property rights of the Kentucky company might not have been completely annihilated in the exercise of the war power, provided compensation had been made therefor. The maniacal purpose of the act is pointed by the fact that in every other law passed during the war where property was taken for the purpose of the war, compensation was awarded for the deprivation. For the taking of factories, ships, and war materials, street railroads and their lands and plants, foods, fuels, packing houses, coal mines, coal supplies and railroads, houses, buildings, properties in the District of Columbia, telephone and telegraph systems, mines, mineral lands, and everything else provided by law to be taken, between March 4, 1917, and March 4, 1919, for the purpose of prosecuting the war, just compensation was provided for in the laws. Only the brewery and distillery interests had to surrender their property upon the altar of the war and receive nothing for it.

Mr. Mayer, in the brief which he presented in the

Supreme Court in this case, pointed out with irresistible logic that this could not be legally done. He referred to the decisions of that court in which it had frequently held that the exercise of the war power is not without its limits, but that it is circumscribed by the provisions of the Constitution, as contained in the Fifth Amendment, and in general in the first ten amendments to that instrument. He quoted to the court this very pertinent language which had been used by the court itself in *ex parte Milligan,* reported in 4 Wallace, page 2:

"The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false. . . . Wicked men, ambitious of power, with hatred of liberty and contempt of law, may fill the place once occupied by Washington and Lincoln, and if this right is conceded and the calamities of war again befall us, the dangers to human liberty are frightful to contemplate. If our fathers had failed to provide for just such a contingency they would have been false to the trust reposed in them. They knew, the history of the world told them, the nation they were founding, be its exist-

ence short or long, would be involved in war. . . . For this, and equally weighty reasons, they secured the inheritance they had fought to maintain by incorporating in a written constitution the safeguards which time had proved were essential to its preservation."

The philosophy of this enunciation had found its way into the decisions of the highest courts of the states, for instance, in a very interesting case decided by the Supreme Court of Illinois, which Mr. Mayer quoted in his brief. In this case, that court held that the constitutional guaranties of liberty and property were not suspended by a state of war, and that to hold that they were would be inconsistent with every principle of civil liberty and free government. And he also resorted to the entirely analogous limits which govern congressional regulation of interstate commerce and the decisions of the Supreme Court where these limitations have been elucidated, particularly where that court had held that while Congress was given by the constitution supreme control over the regulation of commerce, it could not in any such regulation take private property in disregard of the Fifth Amendment requiring compensation for its taking. And of course it was true all the while that the whiskey was property at that time and had been so adjudged to be by the Supreme Court and all the courts as an answer from time to time to the denunciations of fanatics who had assumed to treat it as beyond the pale of the law and without right or standing in the courts. It was

equally true that property was more than a mere matter of ownership of something, that it included the right to acquire, use and dispose of that something; and that a law which interfered with the free use and enjoyment or the power of disposition at the will of the owner of the property was a taking and an appropriation.

War-time prohibition had taken the property of the distillers and brewers without compensation; and then on February 24, 1919, Congress imposed a heavy retroactive tax, double the taxes then existing on all whiskey; and this retroactive tax the Kentucky company had paid, and being unable to withdraw its whiskey from bond and sell the same, it was, by this War-time Prohibition Law not only deprived of the whiskey itself, but the money as well for the first tax paid and the money for the retroactive tax paid, and without any compensation or redress.

This litigation proceeded in October and November, 1919, at a time more than a year after the Armistice of November 11, 1918. It seemed clear that war-time prohibition had lapsed by its own terms. But prohibition under the Eighteenth Amendment was becoming operative on January 29, 1920, within two months of the time of this litigation and it was determined by the fanatical forces that were manipulating the influences of the war and the advantages of this legislation that there should be no interregnum between war-time prohibition and constitutional prohibition within which liquor could be sold, or that those

whose large interests were legitimate as property rights in liquor could dispose of the same. It was only two months after the passing of war-time prohibition that the Eighteenth Amendment was ratified; and it was nearly six months after the ratification of the Eighteenth Amendment that war-time prohibition went into force, on June 30, 1919. When war-time prohibition went into force on June 30, 1919, six months and more had elapsed since the date of the Armistice. The language of the War-time Prohibition Act was that it should be enforced until the conclusion of the present war and thereafter until the determination of demobilization, the date of which should be determined by the President of the United States. Manifestly, after the termination of the war, it lost its purpose of conserving the man-power of the nation and of increasing the efficiency of the production of arms, munitions, ships, food and clothing. In the autumn of 1919, when this litigation was proceeding, the war had been over for more than a year and there was no occasion to conserve the man-power of the nation or to increase its efficiency of production of arms, foods, ships or clothing for the army and navy. On November 11, 1918, President Wilson, in addressing Congress, had said:

"The war thus comes to an end; for having accepted these terms of armistice it will be impossible for the German nation to renew it. . . . It is not now possible to assess the consequences of this consummation. We know only that this tragical war whose consuming

volume swept from one nation to another until all the world was on fire is at an end."

On June 28, 1919, President Wilson had signed the Treaty of Peace with Germany, and on July 10, 1919, he had presented that treaty to the Senate and in doing so said, "The war ended in November, eight months ago." On September 30, 1919, the War Department issued a manifesto in which it stated that, "in general the accident of war and the progress of demobilization are at an end." In vetoing the Volstead Act on October 27, 1919, which sought to enforce war-time prohibition, President Wilson used these words, referring to the War-time Prohibition Act and its provisions, "they have been satisfied in the demobilization of the Army and Navy, and whose repeal I have already sought at the hands of Congress." On November 11, 1919, a year to a day after the Armistice, General Pershing had said: "Our armies have been demobilized and our citizen soldiers have returned again to civil pursuits with the assurance of their ability to achieve therein the success they attained as soldiers."

It is to be observed that the War-time Prohibition Act did not provide that it should be in force until a treaty of peace should be signed between the United States and the German Imperial Government; but was only to be enforced "until the conclusion of the present war, and thereafter until the termination of demobilization, the day of which shall be determined and proclaimed by the President of the United

States"; and as the war had been concluded and demobilization terminated and the fact proclaimed by the President, the conditions of repeal of the law were fulfilled. The law had nothing to do with international relations; it did not define the rights of aliens; it was solely to protect soldiers, sailors and munition workers from intoxication while connected with army and navy; in other words, to conserve the man-power of the nation. It followed from this that the end of the war was determined by the mere fact of a cessation of hostilities between the United States and Germany; and that no formal treaty of peace had been executed between the two countries did not operate to keep the war-time statute alive. After the Armistice of November 11, 1918, the constitutional rights of citizens of the United States were to be considered as being in a time of peace and not in a time of war. Many wars have been concluded without any treaty of peace. Mr. Seward, while Secretary of State, addressed a letter to the Spanish Minister, dated July 2, 1868, in which he said: "It is certain that a condition of war can be raised without an authoritative declaration of war, and, on the other hand, the situation of peace may be restored by the long suspension of hostilities without a treaty of peace being made. History is full of such occurrences." In 1720 the war between Spain and France was terminated by the mere withdrawal of their respective armies, and that was the case in 1801 in the war between Russia and Persia, as it was between Spain and her revolted South American colo-

nies, in 1825. So it was that one of the Federal courts of review, in deciding the case of *United States vs. Hicks,* had before the submission of this case to the Supreme Court by Mr. Mayer, decided that, "The authoritative publications show that while war is usually terminated by a treaty of peace, and that such treaty is the best evidence of such termination, history shows many instances in which wars were terminated without any treaty at all." And then, referring to President Wilson's official communication to Congress of November 11, 1918, this language was used: "The President's official communication to Congress met all the conditions of an official termination so far as such documents are designed for giving information."

It was true that by the terms of the Lever Fuel and Food Control Act of August 10, 1917, no liquor could be lawfully made in America. And it was also true that liquor that had been lawfully made before that date might be disposed of between November 21, 1918, and June 30, 1919; in other words, between the date of the passage of the War-time Prohibition Act and the date that it went into force. These considerations were wholly persuasive with the Supreme Court on the subject of the Fifth Amendment, and led that court to hold that this seven months and nine days were not an unreasonable time in which distillers could dispose of the liquor in their bonded warehouses on the date of November 21, 1918. And the other consideration that influenced the court to defeat Mr.

Mayer's client in this litigation was that demobilization had not terminated at the time the Kentucky Distilleries and Warehouse Company entered the courts for the purpose of relieving itself of the restriction of war-time prohibition. To show that demobilization was not completed, the court made reference to various reports of the Secretary of War up to the date of November 11, 1919, in which the progress of demobilization was reported. By these legalistic tinkerings and forgings, war-time prohibition was merged with prohibition under the Eighteenth Amendment.

Mr. Mayer also appeared in the Supreme Court in one of the cases in which the constitutionality of the Eighteenth Amendment was involved, and on March 9, 1920, made an oral argument in behalf of the Kentucky Distilleries Company, which was one of the interests attacking the validity of that amendment. Two of the actions were in behalf of states, namely, Rhode Island and New Jersey, and the other five were suits against United States officers entrusted with the enforcement of the Amendment and the Volstead Act, passed in pursuance of its provisions. The array of legal talent in these contests was very great and included such distinguished lawyers as Elihu Root, William D. Guthrie, as well as William Marshall Bullitt, who was associated with Mr. Mayer in the prosecution of the case of the Kentucky Distilleries Company. The fact that the Supreme Court, in deciding these cases on the seventh of June, 1920, did

not file an opinion, but only recorded its conclusions, embodying them in eleven deductions serially stated, lends credit to the supposition that the court was not able to controvert by legal reasoning the extremely rich and able arguments which were made against the Amendment by these attacking lawyers, and particularly those of Mr. Mayer and Elihu Root. The Chief Justice criticized the method of disposing of the cases without filing a full opinion and said, "I profoundly regret that the Court has deemed it proper to state ultimate conclusions without an exposition of the reasoning by which they have been reached."

Minds like Mr. Root's and Mr. Mayer's, of the first grade of talent for dealing with intricate questions such as were involved in the Eighteenth Amendment cases, naturally saw some of the same weaknesses in the amendment and the proceedings which brought about this litigation, as well as seeing the same conclusions which would flow from so revolutionary an innovation upon the organic law. A few things pointed out by Mr. Root ought to be mentioned here. He showed that by the census of 1910 there were thirteen states in the Union whose aggregate population did not equal five per cent of the entire population of the United States. And as a consequence of this he pointed out that however vast the majority of the population in the future might be who would be persuaded by experience that direct legislative regulation of the rights and personal habits of the people had become unwise and unnecessary, they would be helpless

to change the law if there should be dissent on the part of that five per cent of the total population. In this connection he declared that the Eighteenth Amendment was not a constitutional act at all, but was a piece of direct legislation and of a police character; and that as all legislation under the American system is passed by the majority, it is absurd to create a condition by which a minority could prevent the repeal of such legislation. He conceded that the people might adopt any amendment to the Constitution that they chose, but as the amending authorities provided for in Article Five were only agents of the people and not the people themselves they had to act within the authority conferred by Article Five; and that that authority did not embrace the right under cover of amendment to adopt mere sumptuary laws, which were not a good thing in truth or in essence by constitutional amendment. And he showed that if this could be done, then such vital rights as the freedom of religion, or any other constitutional right, could be taken away by amendment. He further pointed out that, as there were three-fourths of the states of the Union whose total population amounted to less than forty-five per cent of the whole, in consequence two-thirds of a quorum of both Houses of Congress might, as representatives of such three-fourths of the states, be but the spokesmen of a minority of the population. As to the character of the general government, the literature, the speeches of Webster, and the speeches and state papers of Lincoln pronounced the doctrine

that the Government of the United States was an indestructible union of indissoluble states. It was one of the hypotheses of Lincoln upon which he stood in dealing with the secession of the southern states that no state could get out of the Union, and that the Union could not be dissolved except by the act of all the states. But the Union is nothing beyond the aggregation of principles of policy in government and liberty upon which the states have united. If the union is perpetual and can only be dissolved by all the states, then the constitutional provisions through which it is united are perpetual, particularly as to matters of liberty. On the other hand, the Union can be dissolved by a part of the states, if the principle which made it what it is as a Union can be annihilated. It must be true that part of the states cannot destroy its republican character or liberties. Part of the states cannot take away the republican form of government of one of the states; abolish the Supreme Court; set up a monarchy in place of a presidency; create a state religion, or do many other things which enter into the character of the Union, and make it what it is, and without which there is no Union, indestructible or otherwise.

Article Five, which provides for amendment to the Constitution, contains two limitations upon the power of amendment. One was that "no amendment which may be made prior to the year 1808 shall in any manner affect the first and fourth clauses of the Ninth Section of the First Article"; and the other is,

"no state, without its consent, shall be deprived of its equal suffrage in the Senate."

Mr. Mayer, in his printed brief filed in this case, proved conclusively that the power of amendment was subordinated to the language of the Ninth and Tenth Amendments, and that it was futile for states, by the Tenth Amendment, to reserve to themselves or to their peoples, the powers not delegated to the United States, if by Article Five they had already provided that by amendment powers not delegated could be taken away by three-fourths of the states from states not assenting. He made clear that the power of amendment conferred by Article Five was restrained by the Tenth Amendment which reserved the police power and powers not delegated; and that if this were not true, then the power of amendment conferred by Article Five laid prostrate the freedom of religion, the freedom of the press, and the other great privileges which the framers of the Constitution took such pains to protect. He put out of court the contention that the only limitation upon amendment was that which forbade the deprivation of a state of its equal suffrage in the Senate without its consent, by remarking that "if this be true, the indestructible union of indestructible states was a pure dream," since the members of the states could be overborne by amendments which would erase the Tenth Amendment from the organic law.

There was another point which Mr. Mayer made which was sufficiently persuasive by mere statement

and by tabulation of the figures. This was that the Eighteenth Amendment had not been proposed by two-thirds of both Houses of Congress. On December 18, 1917, when Congress proposed the Eighteenth Amendment, the full membership of the Senate was 96 and the full membership of the House 433. Two-thirds of the Senate were 64 and of the House, 289. Acting upon their own rule that the constitutional requirement was observed if two-thirds of a quorum voted in favor of the proposal, the Eighteenth Amendment was submitted to the legislatures of the states upon a vote in the Senate, in which only 47 votes were in favor of the amendment, and in the House, in which only 282 votes were in favor of the amendment. In the Senate 8 voted against the proposal and in the House 282 voted for it, with 128 voting against it. In summation, two-thirds of both Houses were 353 votes, while the amendment received but 329 votes in both Houses for its proposal to the states. In making this particular point, Mr. Mayer was met by the ruling of the Supreme Court in a case decided not long before the time of the argument of the Eighteenth Amendment cases (*Missouri Pacific Railway vs. Kansas,* 248 U. S. 276). But the court could easily have held that the previous case and its decision had no application to the Eighteenth Amendment litigation on the subject in question. The previous case was concerned with the construction of Article One of the Constitution, and not Article Five. The court there determined what the "House" was

and held that the same body which was organized and entitled to exercise legislative power was a body which was empowered to pass a law over the veto of the President; and that such a House was constituted of the majority of the full membership. Mr. Mayer, in showing that Article One and Article Five looked to entirely different situations and necessities, pointed out that, if the court had ruled otherwise in the case referred to, it would have held in effect that twenty-six per cent of the total membership of the House could pass laws and transact business, but that it would require sixty-seven per cent to override the presidential veto—in other words, not merely two-thirds of a quorum, but two-thirds of the whole House would be required to overcome the veto.

Finally, Mr. Mayer discussed the fact that nineteen states at the time of the proposal of the Eighteenth Amendment had incorporated the initiative and referendum in their constitutions whereby the people had made themselves a constituent part of the legislative power; and that, as the Federal Constitution required that an amendment should be adopted by the states through their legislatures, it was necessary for an amendment to be adopted upon a referendum in the states having a referendum; and that, as this had not been done, the Eighteenth Amendment had not in fact been passed by three-fourths of the states. In those states having the referendum both state amendments and Federal amendments had to be ratified by a vote of the people. It was a curious piece of irony

that the Supreme Court had this opportunity to whack the initiative and referendum and thereby to put a quietus on what had been agitated as a socialistic expedient, and in behalf of the higher morality of prohibition.

Mr. Mayer's oral argument was a marvel of condensation and directness and went straight to the mark on all the points involved. He was frequently interrupted with questions by the Chief Justice and various members of the court. His argument showed that he had every detail and every fact in every decision applicable at the end of his tongue. At the conclusion of his oral argument he rose to a very high level of eloquence. He was asked by one of the Justices whether the Tenth Amendment was subject to amendment, which was asking if the powers not delegated by the States to the United States might be taken away from the states, and whether the rights reserved to the states by not being granted might be annihilated by the same procedure which brought about the prohibition movement. Indeed, to ask the question was to raise the point whether the police power of the states, which had been invaded by the Eighteenth Amendment, could be taken from them by it. Mr. Mayer's answer to the inquiring Justice was this:

"No, sir, it [Tenth Amendment] is not subject to amendment in my judgment except with the consent of every state. You are coming to the fork of the roads. In one direction lies the unlimited power of

amendment; in the other the slogan 'Back to the Constitution.' By the Census of 1910 a minority of our population, 40,000,000, resided in thirty-six states, while the majority, 50,000,000 resided in twelve states. If then it be permissible under Article Five for two-thirds of both Houses—which under Your Honor's rule in *Missouri Pacific vs. Kansas* (248 U. S. 276) need be but thirty-four per cent, a mere minority of each House, when ratified by the Legislatures of three-fourths of the states, to make unlimited amendments to the Constitution, then it is in the power of two-thirds of a quorum of each House ratified by the Legislatures of three-fourths of the states which contain a minority of the population—to change the Constitution, to abolish this Court; and to eradicate Article Three which provides for the judicial power of this and other Federal courts. It will not do to say that the people are too wise to do this. This court has turned down the argument over and over again. The claim that the delegation of power should not be checked because it will not be abused is no answer to the charge that power does not exist. As Chief Justice Marshall said in *McCulloch vs. Maryland* (4 Wheaton 316), what state would entrust itself as a member of the Constitution of this Union if it knew that any other state could take away its power of local self-government? The theory of our government and the protection and preservation of our institutions does not rest upon confidence, that great Chief Justice proclaimed. No line can be drawn if the provision in

Article Five is the only exception—if it is the only limitation on the power to amend the charter of this government, and of our political existence, then the presidency may be abolished. A republican form of government may be annihilated, or a state religion established. Article Five itself, which provides for an amendment by three-fourths of the legislatures, can itself be repealed or reduced to a minority. The very proposition is staggering and it does not make any difference whether we are discussing whiskey or the sugar of Louisiana or the cotton of South Carolina, or the tobacco of Maryland and Connecticut, or the hops of Washington. I rise above the question that this concerns intoxicating liquors. I dwell upon the principle that is involved. Should the Constitution be uprooted? In a learned discussion to which I listened yesterday, one of Your Honors [Brandeis, J.] referred to the fact that the minority of to-day may become the majority of to-morrow. Is it an idle proposition, is it an opium dream to suggest in this august presence the possibilities that may result from changes in political and social policies and theories, from wise and unwise, sane and insane agitation and clamor? If you remove that which the Constitution was for, as much as anything else, the protection of the minority against the majority—if you remove this check and balance, where do you leave this government and its future? Yes, the question is more than the prohibition of intoxicating liquors. The police power of the states is synonymous with sovereignty, with the state itself.

Remove the police power from the state and no state exists. There is practically nothing within the exercise of the sovereign governmental powers of the states that does not finally find root in the police power as it is understood in American government. Would the thirteen original states have ever formed this Union if they had believed that their sovereign power of local self-government could be destroyed without their consent?"

CHAPTER VII

ATTITUDE TOWARD PUBLIC QUESTIONS

MR. MAYER'S absorbed professional life did not keep him from contact with public movements, or interfere with his expression of opinion on political issues and economic questions. Especially was this true as to matters of public moment in Chicago. He was primarily alert to the decisions of the courts which bore upon the rights of capital and the policies of the government; but as his mind reached into the farthest parts of the business world, in speculating upon trade conquests wherever the power and enterprise of America could accomplish them, he was happy to behold the beginning of America as a world power, at a period of his own life when he was most zestful and imaginative. In May, 1901, when the decisions of the Supreme Court of the United States as to the status of Porto Rico and other American acquisitions resulting from our victory over Spain, so deeply stirred the country, Mr. Mayer, in an interview which he gave to the Chicago press, expressed his delight over the new place which he saw that America would occupy in consequence of the Court's ruling.

"In the DeLima case," he said, "the court holds that, as soon as the territory is annexed by treaty, purchase or conquest, it becomes a part of our national sovereignty and subject to the constitution—in

other words, that the constitution follows the flag. The assertion of this doctrine I regard as a great victory, not for the administration of President McKinley, but for all the people. . . . Revenue, however, is of minor importance, when compared with the fundamental bulwarks of constitutional right and liberty, concerning which Congress is not given power to make rules and regulations affecting their territory."

Mr. Mayer at the start of his life had been a Democrat, and was accustomed to vote the Democratic ticket in municipal affairs, and he had voted the National Democratic ticket until the advent of Bryanism. It is clear from this study which has progressed thus far that he was not a man who could find anything but heresy in the economic and political doctrines which were enunciated by Bryan and, though many Democrats lamented the acquisition and rule of territory which was not contiguous to the United States, Mr. Mayer saw no particular danger in it. On the contrary, he found much in the decisions of the Supreme Court respecting the status of America's insular possessions to encourage him in the belief that the principles of liberty contained in our Constitution would be extended by our advent as a world power. It is illuminating to contrast his ideas with those of John P. Altgeld (at one time Governor of Illinois and at another time Judge of the Superior Court of Cook County), whose interview was published side by side with Mr. Mayer's and with equal conspicuity.

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"The syndicates," said Altgeld, "for many years have controlled the Supreme Court of the United States and from time to time get it to render such decisions as they want. Several years ago, when Congress had passed a new income tax law, the syndicates wanted it destroyed, and, although the Supreme Court had for one hundred years held an income tax to be constitutional, the syndicates got the majority of the court to hold the act to be void. . . . Now with regard to our insular possessions, the syndicates want to exploit, not only the United States, but these islands, by means of tariff laws and other measures whereby they can catch the coon 'a-coming and a-going.' They have gotten the court to render such a decision as they wanted and in the future they will get such other and further decisions as their rapacity may demand. I agree with Judge Harlan when he says, 'The decision of the court, as rendered yesterday, means the destruction of constitutional liberty.' The fact is that the worst has come to pass. This decision of the Supreme Court shows that the court is merely an instrument in the hands of the corrupt commercialism of the times which is going to lead to the overthrow of republican institutions."

It is, perhaps, enough to say, by way of comment upon these diverse expressions, that neither Altgeld nor Mayer was entirely right in his appraisal of these decisions; but that there was a modicum of truth in both of them. The thing that stands out clearly, when a review is taken of the course of history, is that busi-

ness pretty much controls historical events, including decisions of courts and policies of government, and that idealism achieves a partial success along the way and may finally modify great wrongs, particularly after they have exhausted their power. Now that a quarter of a century has elapsed since America left her seclusion for world paths, one may see through the art of the movie in pictures of news events what it is for America to be a part of all that goes on around the globe, and somehow one seems to get a forecast of a world unified in civilization as the consequence of being unified in trade.

Following the habit of his college days, Mr. Mayer continued, in spite of great professional responsibilities, to write articles for law journals and other publications and to make speeches before societies and industrial bodies, to graduating classes, at banquets of business men and other gatherings. If he had any timidity at the start in appearing before audiences, he speedily overcame it, as he had cured himself of his diffidence in court. From the start he was gifted with an accurate and extensive command of language, and his articles and speeches were always instructive and substantial. His convictions were definite and clear-headed upon such subjects as the rights of corporations and the laws affecting them, and upon matters of taxation, finance, railway operation, law enforcement, courts, procedure. As he went on, his interests enlarged to more general subjects. At the

time of the war he was prepared to see from many standpoints the great problems which affected the country, and to express himself upon them with learning and with force.

Some quotations from his speeches, incorporated here without chronological sequence, and delivered at different times, may be given in this chapter for the purpose of illustrating his manner of thought and expression upon a considerable variety of subjects.

On April 18, 1914, he delivered an address before the Chicago Chapter of the American Institute of Banking on the subject of legal disorders. "Much of the legal disorder," he said, "so prevalent now, grows out of the administration of the criminal law. What I shall say has to do with the state courts,—in criminal cases in the Federal courts, the law is administered upon a safer plan,—with more certainty—and justice is generally done there, due to the lesser influence of politics, and the greater independence and fearlessness of the Federal judiciary. . . . In the early days of this government, the bar led in all progressive and public movements and the practice of criminal law has proved a disturbing factor. A careful, observant, and leading member of our local judiciary said to me that very many of the lawyers who practiced at the criminal bar were unworthy of confidence; that they were engaged in a constant effort to deceive the court and to cheat justice."

On the subject of the jury system he said, "The jurors, who, in England—from which the right has

sprung,—are men of the highest character and intelligence, are, in the big cities of this country, usually of a low order of intelligence, often ignorant of or indifferent to the needs of social order and safety, and frequently men out of a job, who find the juror's pay their only source of livelihood. . . . The Legislature of Illinois has, by law, prevented any intervention by the judge in the trial of a criminal case, beyond a colorless statement of the law. The court is prohibited from expressing his opinion upon the facts, although his experience and training thoroughly qualify him to do so. . . . There are two cures for this prevalent condition, which, if not checked, threatens the security of our Republican society. One is a complete and fundamental revision of the entire methods of procedure in the trial of criminal cases. Accomplishment of such a result seems almost hopeless at the hands of the bar as a body. Demand for such reformation must therefore come from the people at large. Every organization—religious, civic, social, commercial, financial, and political—should have a standing committee to work in unison with every other similar committee, and, by agitation and votes, demand the necessary reforms. Next, and equally if not more important, the law should be codified and reduced to simplicity and clearness. In Illinois alone there are four hundred and forty-two printed volumes of reports of decisions of the courts, each volume containing nearly one hundred decisions, or a total of over forty-four thousand, and about ten volumes are now published annually. In most

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European countries the whole body of the law is in codified form, and can be found in a handful of volumes. Notably is this so in France and Germany, whose collective population, wealth, industry, and commerce is not very much less than that of the United States. A very great part of our criminal law and decisions has to do with procedure, with red tape and technical rules of practice,—things having nothing in the world to do with the guilt or innocence of the accused. They breed interminable delays and frequently result in revolting and abhorrent defeats of justice. They are the creatures of the lawyers' handicraft, and practically all should be wiped out. They do not exist in any of the other leading countries of the world. There the judge regulates in each case the practical application of the law, and no quibbles or quirks frustrate the substantial rights of either the state or the accused."

On February 22, 1915, Mr. Mayer delivered an address in Peoria, Illinois, before the Crévecœur Club, on the occasion of Washington's birthday, his subject being, "We need less investigation, less law." He first referred to the Federal boards empowered to investigate business and corporations, naming the House of Representatives, the Senate, Department of Justice, the Interstate Commerce Commission, the Federal Commission of Industrial Relations, the Bureau of Corporations and the Bureau of Immigration. "Investigation is the penalty of success," he said. Commenting upon the waste in the business methods of the Federal Government, he used this language:

"A report made to Congress in 1912 shows that there were then eighteen different systems of bookkeeping in the treasury department; that the secretary of the treasury could not tell within fifty to one hundred millions of dollars the current obligations outstanding against the government; that the secretary of the treasury could not give to the president a clean-cut balance sheet, showing the exact financial position of the government, and that the records of payment were from three months to a year and one-half behind; that there were from three hundred to seven hundred millions of unaudited payments not on the books at all! The report showed a woeful lack of co-operation between the different departments, and that there was a duplication of efforts costing many millions of dollars yearly. Among many illustrations, it appeared that the post office department was carting tons of mail from the printing bureau to the post office three-fourths of a mile away, and that this same mail was again hauled back to the railroad station, directly across the street from the printing bureau whence it came."

Commenting on the activities of corporations in the United States, he spoke as follows:

"No private organization, no matter how big, could stand such gross mismanagement and reckless inefficiency. And what is true of the nation applies to the states and to the municipalities. Mismanagement, waste, and inefficiency are in the saddle. These same political orators are instructing and directing the

merchants and manufacturers how to run their business,—business which, of the corporations alone, yielded during the year ending June 30, 1914, a net income of $4,339,000,000. . . . When the framers of the Constitution put into that instrument, in 1789, the guarantee that the citizens of one state shall enjoy all the privileges and immunities of the citizens of every other state,—they could not have anticipated how much corporate entities would thereafter control the industries of this country. Had they foreseen the reality, they would have defined the word 'citizen' to include a corporate as well as a natural person. There were at that time, in the United States, less than thirty corporations for profit. In 1800 the total corporations of all kinds in this country, was 225. To-day there are 350,000. For the fiscal year ending June 30, 1914, 316,909 corporations made returns to the Commissioner of Internal Revenue under the Income Tax Law. Those corporations have a capital stock of $64,971,000,000, a bonded indebtedness of $37,136,000,000, and a net income of $4,339,000,000. These figures are beyond human grasp. The corporations in this country do over ninety per cent of its entire business. Why should not they, like individuals, be guaranteed equal privileges? To-day nearly every corporation is engaged in business in other states. Immediately it sets foot across the boundary line of its own state, it is treated as an enemy, and is made to comply with oppressive requirements before it can secure recognition as a legitimate enterprise."

After considering the difficulty that corporations find themselves in, due to a multiplicity of laws which differ in different states, he proposed a national incorporation act as a solution of the confusion. "Instead of this tremendous handicap and burden," he said, "let Congress stop investigating, and pass a short model Federal Incorporation Law that will supplant the existing conflicts of forty-eight state systems. In the arena of trade and commerce, the fetish of state rights has disappeared from all democratic and republican creeds alike. . . . There are some four thousand legislators, national and state, legislating for us. The result of this activity defies conception. During the last sessions of the national and state legislatures, 43,403 pages of laws were enacted; they embraced 20,510 chapters, and covered 151,083 heads or subheads. During this same period there were 28,000 decisions by courts of appeal in this country. These decisions have the force of statutory law, and are equally binding. Ignorance of these decisions is attended with the same consequences as ignorance of statutory law. The annual output of Congress and of our American legislatures is estimated to be five times greater than that of all the combined legislative assemblies of the world. This has produced a constant effort to evade the law without incurring the risk of punishment."

Comparing the industry and commerce of America with that of Germany and Great Britain, he said:

"The population of Germany is in round numbers

seventy million. Its annual exports prior to the war were $2,475,000,000, and imports $2,675,000,000, or a total of $5,150,000,000. Our imports during the fiscal year ending June 30, 1914, were $1,896,000,000, and the exports $2,364,000,000, or a total of $4,260,-000,000 foreign trade. During substantially the same period Great Britain, with a population of forty millions, had exports of $3,075,000,000, and imports of $3,845,000,000, or a total of $6,920,000,000. . . . Comparison of the manner in which the German, English and French governments stimulate, help and foster trade, puts us to shame. There is no legislative business torment in those countries. There, fruitful development of commerce and industry are among the most important governmental functions. Everything possible that helps or improves industry receives public and official encouragement and assistance. In their industrial systems there are innumerable agreements and syndicates authorized and approved by government to reasonably control output and fix prices."

Then commenting upon the various regulative bodies of the Federal Government and upon the Federal Trade Commission, then recently established, he said:

"The merchants and manufacturers of this country must be let alone, or industry and trade will be run by the government, and the economic and political results will be injurious alike to employer and wage earner. The success of the former is necessary to the

life and prosperity of the latter. . . . Economic life will not yield to legislative medicine."

By way of cure for the damages which he discussed, he proposed that the legislature meet not oftener than every four years, unless specially called; that the number of legislators be reduced and that, instead of having a majority of the lawmakers composed of lawyers, business men should be sent to the State Assemblies and to Congress. "The United States," he said, "is, above all countries, one of commerce and business. Its origin, its history, and its people, spell industry. Commercial development and success mean progress and betterment for all the people. To manage the business of this country by legislation or commission, seriously injures commercial, mercantile, and agricultural pursuits, and will dry up the springs upon which labor must depend for improvement and progress. I would like to see successful, broad-gauged merchants and manufacturers nominated for high office. The time is ripe for the attempt. The fundamental principles of constitutional law are settled. There is, therefore, no longer the same force in the contention that the chief executive officials should be lawyers. . . . It is not at all certain that the great body of wage-earners,—and they are a reading, thoughtful and thinking class,—will not coöperate. You can then show the world the difference between the rule of the professional politician and your own."

During Mr. Mayer's life, between 1880 and 1914, Chicago had grown from a city of less than half a mil-

lion to a city of nearly two million. In those years he had seen the business part of the city of Chicago rebuilt more than once; and the city as a whole burst the bands of its early youth. There was scarcely anything relating to Chicago that did not enlist Mr. Mayer's interest and evoke from him some expression about it. About 1907 new franchises had been granted to the surface railways, and provision was made in the contracts with the railways by which a fund was to be developed for the building of a subway which Chicago badly needed before 1907, and needed still more after that year. The street railways, to induce the city to give them twenty-year franchises, agreed to pay the city fifty-five per cent of the fares, and this contribution went into a fund to be used for digging subways for the city. Mr. Mayer was very much interested in the project of an underground system of transportation. He made some speeches about it and gave out some interviews, endeavoring to press the problem to a solution. On one occasion he spoke before the Chicago Real Estate Board at one of its weekly luncheons, advocating city-wide subways. He pointed out that if Chicago was to continue at a normal rate, it would have to keep transportation facilities abreast of the demands, instead of a dozen years behind them. On November 14, 1913, he gave out an interview to the press, in which he said: "In my opinion—my legal opinion—the city of Chicago has the clear, straight legal right, if it deems it necessary and appropriate, to issue its own bonds to an unlimited extent to cover

the cost of the proposed subway and its equipment, utterly regardless of the present constitutional limitations of our indebtedness. But—and this I want carefully underscored—the lien of such an issue of proposed bonds must be legally limited and restricted to the subway property and its income and cannot, must not and will not constitute a municipal or general indebtedness or liability of the city of Chicago."

At the time that this biography is being written, the problem of the Illinois Central Railroad's occupancy of the lake front of Chicago is approaching solution through electrification. When the city was very young, before Michigan Avenue became the great and popular boulevard that it is to-day, the Illinois Central, with its trains and switching, was not the definite nuisance that it became as the city expanded and as æsthetic considerations were more and more observed in the building of the metropolis. The wall which was set at the extreme eastern edge of the Lake Front Park and enclosing the tracks; and the partial creation of Grant Park on the eastern side of the tracks did not eliminate the objectionable features of the railroad's traffic and use of its track space. Chicago has always been afflicted with bituminous smoke, and the Illinois Central was one of the great offenders, pouring clouds of black suffocation over the principal boulevard of the city. With the building of the Auditorium and the Congress Hotels, Michigan Avenue assumed first place as the hotel street and the erection of the Blackstone and Stevens Hotels completed its

success in this present time. So much space is given to this matter for the reason that the sins of the Illinois Central Railroad were for so long a time a matter of resentment and agitation. One of the newspapers of Chicago, for many years, scarcely omitted from any of its issues a cartoon and editorial or a news article concerning the smoke and noise of the Illinois Central engines. Mr. Mayer, alert to all the happenings of the city, did not omit to take part in this agitation against the nuisance. In November, 1913, he was residing at the Blackstone Hotel and, discovering that one of the officials of the Illinois Central had rooms in the Blackstone and had moved to another part of the hotel in order to get away from the noise of the railroad, made the comment in the press that if a railroad man who had been in the business all his life could not stand the noise of the railroad, it was easy to imagine what it meant to other guests. "The final solution of the problem is electrification," said Mr. Mayer. He was, accordingly, urging the city and the authorities to compel the railroad to electrify its tracks, in speeches and interviews from time to time, up to the day of his death.

In other chapters Mr. Mayer's activities during the war have been chronicled. Some of his speeches made during the war time, however, should be spoken of in this place, as they related rather to issues which grew out of the war than to the war itself. On the fourth of January, 1918, he made a speech at the Chicago Association of Commerce at one of its luncheons on the

subject of "Some Follies of 1917." One of the topics touched upon in this interesting speech was that of thrift, which was incessantly urged, in and out of season, at this time. It was a preoccupation. Mr. Mayer referred to what Professor Sumner said when describing a doctrine which has arrived at a state of authority and refuses the test of reason. It then becomes a club which any demagogue may swing any time and concerning anything. "No one," said Mr. Mayer, "in his senses can or does object to the elimination of extravagance or of waste, but we must call a halt when it comes to advocating economy to a degree that will bring industrial and business disaster."

He then referred to a speech recently made in Chicago by a war enthusiast, in which the speaker said that the boy who buys a baseball should be made to see that he is using rubber that might go into an ambulance tire, and leather that might go into a soldier's boot. Mr. Mayer ventured the opinion that the speaker in question was carried off his feet by an excess of patriotic ardor. "Tobacco is not essential," said Mr. Mayer, "but it is a comfort and a solace to the soldier, and if cut out, at least one great industry would be destroyed. . . . We must not destroy the business of dressmakers, tailors, jewelers, theaters, artists, musicians, and of scores of other industries that furnish comfort and amusement to the nearly one hundred million people who are at home, toiling and working so that the world may be made free. . . . This fetish against so-called 'hoarding' has been so

strongly pressed that it has already brought great suffering and want in the industrial centers of this country. . . . It is estimated that nearly five million wage-earners and dependents are engaged in the production and handling of non-essentials. To say that their industries shall be wiped out, and all engaged therein put at the production of war essentials, is to argue for economic havoc and commercial and social destruction. . . . If it be necessary to establish ruthless economy in order to sell thrift stamps, we shall find that the machinery of society will stop running and there will be no revenue or income with which to buy thrift stamps or liberty bonds. . . ."

On May 11, 1912, Mr. Mayer delivered an address before the Joseph Medill School of Journalism at Northwestern University, in which he gave a very interesting and clear historical view of the Law of Libel, and of the ruling that the publication of the truth is justified. Commenting, however, on one of the features of modern journalism, he referred to the Iroquois case and the bitterness of the press against those who were supposed at the time to be responsible for that catastrophe.

On November 11, 1921, he spoke before the Union League Club of Aurora, Illinois, at a dinner given in celebration of Armistice Day. At that time the Disarmament Conference, called by President Harding, was about to convene in Washington, and hopes were being raised that this was a step toward the final abolition of war. Mr. Mayer was not optimistic on

this subject. "Personally," he said, "I do not believe that all wars between nations can be avoided, any more than quarrels between private individuals can be made impossible. Nations are ruled by human beings. In their collective as well as in their individual capacity, nature has implanted the spirit of revenge, envy, jealousy and covetousness. These poisonous instincts can never be completely obliterated. In the future as in the past, they will inspire conflicts and wars. . . . And as separate nations will, from time to time, feel themselves wronged, we must expect that they will seek revenge; and it will be remembered that those who seek revenge 'have ears more deaf than adders.' But what the Washington conference can and, I hope, will do, is to reduce and control the deadly weapons without which, if not at hand, nations will not and cannot be so ready to strike."

After review of the cost of the war to the United States and to other countries, he said:

"Realize what it means, when of every dollar that this country spends, over seventy-seven per cent is devoted to wars, past and to come. The amount that this is costing us annually would build the Panama Canal ten times every year. It would drain the swamps, irrigate the deserts, build the roads that the country needs, and construct a waterway in which the products of our soil and factories could be carried right from our very doors and delivered at the ports of European and Asiatic countries without change of bottom. Think of this as a source of employment for our mil-

lions of idle men and as a cure for the never-ending railroad conflicts and problems! . . . We find ourselves on this planet, in a strange position. The nations of Europe are in trouble because they are so poor,—this nation is in trouble because it is so rich. We have here sixty per cent of all the world's gold,—and instead of finding prosperity in it, we realize how Midas felt when all he touched turned into gold. . . . If the people of the world, led by this nation and inspired by the conference that opens to-morrow in Washington, will, with determination and with strong heart, unite in good faith, in unity of spirit, of soul and of will, to fight their way through the terrific problems of war, men can and will return to sanity, nations to prosperity, women and children to safety and comfort, and the earth will take on once more the aspect that nature stands ready to provide,—that of magnificent homes for the human race, warmed by the sun's light, protected and balanced in space by Divine wisdom, constantly progressing toward a higher civilization and a greater and grander destiny. Some of you that hear me may say that stringing together pleasant words and hopes furnishes passing entertainment, but not much nourishment. I suppose that I am looked upon as one whose work it is to offer practical suggestions rather than theories under complicated circumstances. An inhabitant from another planet, coming here and contemplating us to-day, would think himself in a cosmic madhouse. He would see fifteen hundred million human beings living on a planet that

could support them all in ease and comfort. He would find three-fourths of them in actual misery, millions of them killing or planning to kill other millions, a comparatively few intelligent exploiting or leading the many, in ignorant, vicious, undisciplined rebellion against conditions born of their own blindness. He would go back to his own planet and say: 'I have seen enough of that poor earth,—let me out.' The staggering burden of armament produces all these conditions. We must work together, and at the Washington Conference, be ready and willing, by a system of 'give and take,' to induce other nations to willingly and cheerfully coöperate toward disarmament, because prudence and self-protection forbid that we disarm alone."

Commenting on the fact that Congress appropriated ninety-two per cent of the total allotment of money for the year ending June 30, 1920, for purposes of war, leaving eight per cent for the purposes of government, he said:

"This condition cannot continue. It must stop. Another war will start where the world war left off, except that the armies and navies will begin with the military experiences of the past. To outline or portray the next conflict, if it comes, would baffle all imagination. But such a conflict must not come. If the nations represented in Washington will throw aside distrust, resume human confidence in one another, and under the leadership of this government, and its great and distinguished leaders, will cultivate a unity of spirit

and of soul, substantial relief can be secured. . . . Stealth, trickery and old time diplomacy must give way to candid, open, honest and manly discussion and negotiations."

On the other hand, Mr. Mayer was not a friend of the League of Nations. He regarded it as a dangerous departure of policy for the United States to join it and he was particularly apprehensive of the potential evils of Article X. In an address before the Bondmen's Club banquet of Chicago he discussed the covenants of the League of Nations with devastating analysis. "Take Article X," he said, "and put it in big type and ask yourselves what it means, and then say, 'Shall the United States bind itself to these terms?' Mind you, these terms may be enforced not merely by persuasion, but enforced by the boycott and by force of arms. For in Article XIII there is a provision, 'The members of the league agree that they will carry out in full good faith any award that may be rendered by the council.' And, in the same article: 'In the event of any failure to carry out such an award the council shall propose what steps should be taken to give effect thereto.' Now, it is no answer to say that, when this treaty is ratified and signed by the United States, Congress need not pass an appropriation for any army or declare war because the Constitution provides that Congress shall have the power to declare war. When once this treaty has been signed—but let me give you the language of the President of the United States: 'If the world should be troubled again,

if the conditions which we all regard as fundamental are challenged, the guarantee which will be given in the league covenant will pledge that the United States will send the army and fleet across the ocean.' I, for one, do not believe we should be willing under any and all circumstances to pledge that we will send our army and fleet across the ocean to preserve against external aggression the territorial integrity and existing political independence of the Hedjaz, which is a signatory to this covenant. Politics aside, regarding as I do that there is a moral obligation created by a treaty which, as I have indicated to you, is not enforceable, can this country afford to enter into this instrumentality which will bind it forever? I say that with deliberation, because, although there is a term in the covenant which provides that a member may withdraw, it can only withdraw provided the league or the council of the league is of the opinion that it has not violated the covenant of the league of nations to which the withdrawing member is a party."

CHAPTER VIII

MR. MAYER'S ACTIVITIES IN THE WORLD WAR

MR. MAYER had a deep-seated repugnance to Prussianism, at the same time that he cherished American institutions with ardent enthusiasm. We would, perhaps, be indulging in speculation to say that some of his father's experience in Bavaria had sharpened the feelings of the son. The fact stands out clearly, however, that Mr. Mayer's activities during the war were incessant and of a character so whole-hearted and generous that he belonged to that exclusive class of men who, by reason of their ability, their devotion and their great financial means, were able to bring the United States to great military efficiency. Throughout the Union, during the war, State Councils of Defense were organized to mobilize the country for civilian effort. Mr. Frank O. Lowden, who had grown up at the Chicago Bar with Mr. Mayer, was elected Governor of Illinois in the autumn of 1916. His handling of the military situation was extremely vigorous and single-minded. He was in touch with the various programs for the prosecution of the war which were being carried on in Chicago and on one occasion brought about the suppression of a meeting which the Mayor of Chicago was permitting to be held, by threatening the use of the military if the audience attempted to assemble and the speakers scheduled to address the audience undertook

to do so. This was one of those meetings which was about to be held for the purpose of discussing the war and its problems, but which Governor Lowden thought would be disastrous to the unity of the country by its utterances and their effect. Governor Lowden selected his Council of Defense from the walks of labor and capital. On May 4, 1917, he telegraphed to Mr. Mayer as follows: "You have been appointed member State Council of Defense. First meeting will be held in capitol at Springfield, ten-thirty, Tuesday morning, May 8." On the same day Governor Lowden wrote Mr. Mayer, "I have the honor to inform you that I have this day appointed you a member of the State Council of Defense." In addition, the Governor named such men as John H. Walker and Victor Olander from the labor unions, David E. Shanahan, long connected with the Illinois Legislature, Samuel Insull, J. Ogden Armour and Fred W. Upham, men of great financial power in Chicago, John P. Hopkins, who had been Mayor of Chicago in 1893-1894 and who was active in Democratic councils, John G. Oglesby, the Lieutenant-Governor of Illinois and the son of Richard J. Oglesby, who had been Governor of Illinois from 1865 to 1869. Mr. Mayer, because of his great comprehension of matters of law and his profound understanding of the business world, became, perhaps, the most influential member of the Council. He at once assumed great duties with reference to advising the Council on the many subjects that immediately began to come

before it; and, out of this relationship, he was appointed General Counsel for the Fuel Administration of Illinois. In addition to these labors, he was making many speeches and was one of those who in the city were spreading the message of the Liberty Loans by four-minutes talks in theaters and other halls at the noon hour and at other times when people were conveniently assembled.

In October, 1917, Mr. Mayer made an address of considerable length before an audience in Racine, Wisconsin, which was assembled in the interest of one of the Liberty Loan campaigns. His attitude toward Germany and his patriotic devotion to America in the war can be manifested by quotations from this address. He told this audience that the conflict then raging was the result of a plot on the part of Germany to humble America and had been conceived by the Kaiser twenty years before that.

"Since the present kaiser became the emperor of Germany," said Mr. Mayer, "that country has been hatching a conspiracy against the United States. It has been intrigue upon intrigue, and masked assaults. These finally culminated in the present world catastrophe. We are on the defensive. We did not declare war upon Germany. That country declared war upon us. From the time that he ascended the throne the kaiser has declared to the world the omnipotence of himself and God, and frequently he has left God out of the partnership.

"For more than twenty years Germany has been

watching an opportunity to humble and strike at the United States. The British navy alone has stood between the Germans and their ambition. Germany has permeated the United States with spies and surreptitious promoters of her ambition to rule the world.

"It is our luck that we have the allies as a bulwark against our German foe, while behind the bulwark we are enabled to prepare for our defense and protection. Without that shield and protection American soil would to-day be the scene of devastating campaigns such as have ravaged Belgium, northern France, Poland, Roumania, Serbia and Montenegro.

"Were it not for the protection that the allies have furnished us, our untrained and unequipped troops would be forced to face the veteran German armies, supplied as they are with all the contrivances that their hellish ingenuity has devised.

"Long before this our homes would have been destroyed, our men, old and young, killed, our women raped and our civil population crushed under the iron heel of Prussianism. Our enemy would merely have to throw a line from Norfolk to Erie, Pennsylvania, a line shorter than that he is holding in France—to seize and secure in his control practically all of the arsenals and most of the military and naval resources of the United States. . . . Many of our ease-loving and pacific people point to the Atlantic and say that even if we should be abandoned by our allies—an improbable idea—the ocean would serve as a barrier between the Huns and this country. But the ocean, instead of

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being an obstruction, would furnish an unobstructive avenue of approach.

"If our navy should be destroyed that waste of water would be the means over which troops could be transported in vast numbers. . . . No American should or can forget that the German government has deliberately pursued a consistent course, deliberately designed to draw the United States into the European conflict. It is not for us to analyze the kaiser's motives, but it is for us in the clear light of the facts, to state the policy the kaiser has pursued."

Mr. Mayer then charged the Kaiser with a series of acts calculated to foment hostility between Germany and America.

"Hand in hand with his plots to create dissension among the American people, to array our citizens against each other, he has incited and encouraged feelings of resentment and hostility at home against the United States almost from the moment he ascended the German throne. In the Spanish war the kaiser endeavored to persuade England to join in a coalition against us. When he failed the kaiser exclaimed (I quote from his own words): 'If I had had a larger fleet I would have taken Uncle Sam by the scruff of the neck.' Remember that that was a threat made twenty years ago."

He then charged that the German admiral in control of the German fleet at Manila in 1898 made threats against Dewey; that in Germany he tried to bully the United States at the same time, and that

John Hay, then Secretary of State, complained of Germany's acts at that time; that the Kaiser tried to seize control of the allied armies in China during the Boxer rebellion; that the Kaiser had attempted to establish a naval base off Venezuela while Theodore Roosevelt was President and that, except for the latter's ultimatum to Germany, the Monroe Doctrine would have been lost at that time. He charged Germany with attempts to dominate the Panama Canal, with machinations to prevent America from acquiring the Danish West Indies, and with attempting to set Mexico and Japan at war with the United States, with a system of espionage to establish in America a base for directing spies, destroy railroad property in Canada, and with sabotage and conspiracies against the United States.

As a part of this address, Mr. Mayer read a letter which had been written on March 25, 1915, by an important member of the German diplomatic service, addressed to an American and received in this country in April of that year. He read it to prove that the German people had been studiously and consistently enflamed by their government against the American people. Among other things, it contained these paragraphs which Mr. Mayer read to the audience:

"Over here . . . one looks with extreme tranquility upon a possible conflict with the United States. As far as Germany is concerned, it would hardly alter the present situation.

"As far as the United States are concerned, the

possibility of a conflict will not be considered likely in view of the Japanese danger, the Mexican embroilment, the general unpreparedness for war and the huge German-Irish element in your country. You do not suppose for a moment, if the Wilson-Bryan administration involves your country in a war for the benefit of England, that these twelve or fifteen million Germans and Irish would sit quiet? Such an eventuality might put the Union to a dangerous test.

"The shipping question is extremely simple to my mind. If one of our submarines should get the Lusitania, either under English or American flag, she would sink her if she could, without a moment's hesitation.

"Your fear that in such a case two or three hundred Americans might be drowned is quite justified; but nothing in the least would happen. If Americans, as well as other neutrals, in spite of the given warning, are still careless enough to travel on English ships, they have only themselves to blame if they come to grief.

"In this submarine war which has been forced upon us by England beginning war against Germany's peaceful population, our government has the full support of every German, and not the slightest modification will be brought into it before our enemies change their tactics in that respect. We are not looking for trouble, but we have no apprehension whatever in that respect, which was shown by the polite but firm

answer of our government to Mr. Wilson's rather overbearing first note of protest."

It is not difficult to imagine the effect upon this Wisconsin audience of revelations such as these from this German letter, particularly as Mr. Mayer pointed out that within a month of the time that the letter was received in America the *Lusitania* was torpedoed. As this speech of Mr. Mayer was given great publicity in the press, its influence was very great. Apart from the publicity which the letter received because it was embodied in Mr. Mayer's address, it received separate publication, conspicuously framed in borders and impressively outlined.

As Mr. Mayer at this time had subscribed for $1,500,000 of Liberty bonds, he was justified by his own devotion to urge those to whom he spoke to buy bonds.

"The greatest proof of real patriotism," he said, "is to set an example—is to do, and to buy Liberty bonds, and to buy them now and not to-morrow. Mere words are but ephemeral ardor, sometimes real and very often artificial. Let no man or woman boast of patriotism unless he or she is prepared to convert words into action—into deeds. Mere mouthings are but the excuse of the pretentious, the indolent and the cowards. . . ."

As a result of this meeting in Racine, subscribers were obtained for bonds to the amount of $900,000, $56,000 of which was subscribed by one hundred and twenty Armenians who had escorted Mr. Mayer from

his hotel to the auditorium where the meeting was held.

In the summer of 1917, and very early after the entrance of the United States into the World War, the price of coal became one of the vexed questions. There are more counties producing coal in Illinois than in any other state; and its manufacturing industries have been developed and maintained by the great coal resources within its borders. The mines of Illinois, under normal conditions, supply the local markets and, even in such times, the producers of coal are enabled to obtain higher prices than those secured even for superior grades from West Virginia. More coal underlies Ohio, Indiana, Illinois, Iowa, Missouri, Kansas and Texas than there is in the whole of Europe. In spite of these advantageous conditions, the war speedily began to affect the distribution and the price of coal. The *Chicago Herald,* in its issue of August 8, 1917, declared that the war-time profits of the coal operators were putting to shame those collected early in the great strife on war brides. As the price of coal began to soar, the situation was complicated by the announcement that the United Mine Workers of America would stand by the mine operators in their refusal voluntarily to reduce wages. One of the officials of the miners' union at this juncture of affairs was reported to have said that the miners in the spring of 1916 intended to ask for a wage increase and then, if the price of coal were reduced, they might not get the raise in wages. But, on the other hand,

John H. Walker and Victor Olander, the labor representatives on the Illinois State Council of Defense, took the position that their patriotic duty overshadowed all matter of wages and selfish considerations, and that the miners would stand by their jobs when they realized what an adequate supply of coal at reasonable prices meant to the nation in its effort to win victory in the war.

One of the committees of the State Council of Defense was the Committee on Law and Legislation. It was composed of Mr. Mayer as chairman and John G. Oglesby and David E. Shanahan as members. On August 7, 1917, this committee, through Mr. Mayer, presented a report which had been formulated by him to the State Council of Defense of Illinois.

"The coal situation in this state," read the report, "is most critical and requires immediate and decisive action. Though not heretofore invoked, there are available fundamental principles of law that furnish means for relief. We recommend for the consideration of the council the following methods, any one or more or all of which can be concurrently adopted: Seizure by the state, and operation by it during the period of the war, of the coal mines in this state. Illinois is one of the leading coal-producing states in the United States. The annual output of this state is about 70,000,000 tons. The powers of the state to meet present conditions exist in their full measures. *Salus populi suprema lex* is a principle as old as government itself. There is an implied agreement on the part of every

member of society that his own individual welfare and property shall, in cases of necessity, yield to that of the state. Houses may be pulled down and bulwarks raised on private property for the preservation of the state and its people. Property may be destroyed to prevent the spread of fire or pestilential diseases. The safety of the state and of its people overtowers private interests. The seizure of the coal mines can be effected without the institution of judicial proceedings, and thus court delays be avoided. The right of the state in cases of this kind has for its foundation the security of sovereignty itself. And the doctrine of eminent domain and the police power to support the right."

The report then referred to certain provisions in the constitution of Illinois, forbidding the taking of private property for public use without just compensation, and that such compensation, when made by the state, should be ascertained by a jury. The report then continued:

"It will be observed that when the compensation is made by the state, a preliminary court proceeding is unnecessary. The constitutional debates of 1870 show that the language just quoted was inserted in the constitution in order to preserve the vital energies of the state and to enable it to preserve its own existence.

"The necessities that confront a state in the exercise of its sovereign powers, whether for military purposes or for the safety and protection of the people, inherently require that the state shall have the power

to take property for public use and to make just compensation therefor thereafter. The courts have held that where the state undertakes the payment of just compensation, it is not necessary that payment shall precede the use of the property by the state. The State of Illinois cannot be sued. The Court of Claims has been created for the purpose of passing on claims against the state. If the state operates the coal mines during the war, a scale of prices for the coal mined can be established by the state and changed from time to time to meet varying conditions. The existing wage scale can, if conditions require, be increased by the state. The coal can be sold at such prices above the cost of production as will (after allowing all proper charges and deductions) leave a fair and reasonable margin of profit with which to pay such just compensation as the Court of Claims may allow the operators. The course here indicated, if pursued, will, in our opinion, not violate the state or Federal constitution, nor constitute an interference with interstate commerce."

The second proposal advanced by Mr. Mayer and his associates on this committee was that an immediate meeting of representatives of State Councils of the neighboring coal-producing states be called, in order that an adequate and uniform measure of relief might at once be adopted and contemporaneously enforced in all those states. The third proposal was that steps be taken by the State Councils of the neighboring coal-producing states, or by any number of them or

any one of them, to bring about the adoption of a Federal law which should give full and sweeping Federal powers of control over prices and distribution to an administrative body which should possess the necessary machinery to render complete and immediate relief.

The report of the committee was telegraphed to the governors of the various surrounding states and an expression of their attitude concerning it was requested. The governors of Wisconsin, Iowa and Michigan immediately telegraphed that they were willing to coöperate with Illinois in every possible way for the purpose of reducing the price of coal. A side light upon the problem was thrown by the editor of a coal journal who was supposed, in a measure, to represent the operators and to express their views. He stated that the basic trouble was one of transportation and that if the state seized the mines it would have to seize the railroads and then would have to seize the factories, which wasted enough coal, he said, in the year 1916 to have prevented the shortage existing in 1917. He stated that the coal cars were not returned promptly to the mines and therefore the coal that was mined could not be effectually distributed. He asked what the state would do with the coal that was mined if the state could not move it and deliver it. The president of the Board of Trade, Joseph P. Griffin, said that if, after mature consideration, the operation of the coal mines should be taken over by the state or by the government the step

could not be challenged. E. P. Ripley, the president of the Santa Fé Railroad, expressed himself as skeptical of the necessity of Federal or state management of the mines. He thought there was no more reason to take over the coal mines than there was to take over the copper mines, since copper was also commanding an exorbitant price; that a radical step like taking over the coal mines was not justifiable, except as a last resort. Mr. Judson, the president of the University of Chicago, stated when interviewed that the proposal of Mr. Mayer and his associates was a reasonable war expedient under the existing conditions.

The report of Mr. Mayer and his associates was unanimously adopted at a meeting of the Illinois State Council of Defense, which sent out a call to fifteen other states for a meeting to be held in Chicago on August 16 to put into execution the proposal of the report, or some other plan calculated to lower the price of coal. Indiana, Wisconsin, Minnesota, Iowa, Ohio, Kentucky, Nebraska, Missouri, Kansas, West Virginia, Pennsylvania, North Dakota, South Dakota and Tennessee were called to the conference.

Before the time of this meeting arrived, strikes and walk-outs in the mines ensued. Meantime, Governor Lowden appointed Chief Justice Orrin N. Carter of the State Supreme Court as Coal Dictator; and, also in the interval, the mine operators had a number of conferences with the State Council of Defense; and on August 10 an arrangement was entered into between them and Governor Lowden, by which it was

agreed that proposals looking to a solution of the difficulty would be submitted to the coal operators of the state for approval at the earliest possible time.

Mr. Mayer was very busy these days in gathering and submitting statistics to Judge Carter in the meetings which he was holding as to the production and price of coal. He had in this work the coöperation of Mr. Samuel Insull and Mr. J. Ogden Armour. Many whole days were spent in submitting evidence of this character to the so-called Coal Dictator of Illinois. At these sessions the mine operators refused to appear, but they were represented by an attorney, who read an elaborate statement, setting forth the reason for their absence. The railroads, however, were represented by their legal counsel. At one of these sessions Mr. Mayer addressed Judge Carter on the general situation:

"If the real conditions were known to the people conservative control would be almost futile. We see this situation not through magnifying glasses. Unless relief comes immediately the critical situation will spread until human agencies cannot control. Every day's delay to fix a reasonable and fair price means a continuation of unbridled, inexcusable profits that will work destruction to the nation. The operators have broken not only with the Council of Defense and the Governor but with the public. They say it is because they fear prosecution under the anti-trust law and fuel control bill. If they feared this, so would you—the chief justice—and the governor be fearful, for

you would be fellow-conspirators. It is an absurd and insupportable pretext to dodge."

He insisted that exorbitant war profits were being shorn off in other fields and that the situation was the "emanation of a combination of rapacious greed and utter irresponsibility to the requirements and necessities of war conditions." "The state council," he continued, "is not prepared to suggest, much less advise, that any industry, whether it be coal or any other productive line of business, shall go unrewarded with a fair—with a good profit. We start with the postulate that every laborer, whether the producer be of labor by mind or body, is entitled in these times to a good reward for his work. But the line of demarcation begins where fairness and decency end. If your honor could have heard the statements at the conferences of governors and state council representatives detailing coal conditions that existed, you would hardly believe there were iron chains strong enough to curb and restrain the terrific indignation which will stir up the wrath of the people of this country not to mutiny but to self-preservation."

He then went into figures and showed that the increase in the price of coal in July, 1917, over July, 1916, was $2.15 a ton. He read a comment from a St. Louis operator of Illinois mines which showed that in 1914 the average cost of production of mine-run coal to him was 94 cents a ton; that in 1915 it was 87 cents; in 1916, 89 cents, and from January 1 to June 30, 1917, $1.02. He gave evidence of a contract that

he knew of, dated March 27, 1916, for coal at 90 cents a ton. He took the statement of the operators themselves and showed that on a production of 2,765,000 tons of thick-veined southern Illinois coal, mined from April 1 to June 30, 1917, the average total cost claimed by the operators themselves was $1.74, and the average sale returned $2.44. He proved that a profit of 15 cents a ton meant a return of six per cent to the operator. He proved that the price of screenings had advanced seven hundred per cent. He read a letter from the Presbyterian Hospital of Chicago which stated that its coal bill had increased $1,000 a month. He offered statistics to show that the Illinois Central Railroad had a contract for coal at $1.35 a ton; the Wabash Railroad at from 80 cents to $1.25 a ton; the Rock Island at 90 cents a ton; the Great Western at $1 a ton, and the Chicago and Alton at $1.27 a ton. The price of coal fixed by the Peabody Committee representing the coal operators of Illinois was from $2.75 to $3.50 at the mine.

While Mr. Mayer was thus pressing the issues in Illinois and the states were gathering their forces to act upon the situation, the Illinois operators, headed by Mr. Peabody, journeyed to Washington to get the Federal Government to take control of the coal situation.

About this time the coal operators issued a statement in which they set forth that the agreement which they had made with Governor Lowden was, in effect, with the State Council of Defense, because it was

made with the Governor who had created that council; that Governor Lowden was ignorant of the fact that the Federal Government had enacted the Fuel and Food Control Act. In point of chronology, this act became law on August 10, 1917, which was the date that the coal operators had entered into the agreement with Governor Lowden that they would submit to their fellow operators suggestions for the solution of the coal difficulty. The Federal law authorized the President to fix the price of coal in the United States, to regulate the method of its production, sale and shipment, its distribution, apportionment and storage among dealers and consumers during the period of the war, and to do this through the agency of the Federal Trade Commission. The President was further authorized to take over any plant, in case any producer of coal or any dealer in coal should fail to conform to the price fixed by the President. The act carried with it a penalty of a fine of $5,000 and two years' imprisonment for asking a higher price for coal than that which had been fixed by these Federal agencies. It carried with it a like penalty for limiting the supply of coal, or destroying or holding back coal already produced. Up to this point, and somewhat beyond it, Judge Carter was endeavoring to carry out his commission as Coal Dictator and Governor Lowden was making speeches at the Chautauquas in Illinois, touching the chaotic and distressing conditions which existed. At the Chautauqua held in Jacksonville, Illinois, he assailed the war profiteers with great ve-

hemence and is reported to have stated that they were "growing drunk on profits." On the other hand, the mine operators were defying the Governor and Judge Carter and were saying that their compact with him was nothing but "a scrap of paper."

To what extent the grave situation was relieved, so far as the public was concerned, by the events which took the coal tangle out of the hands of the state authorities and the Council of Defense and put it in the hands of the Federal Government, it is not necessary for the purpose of this biography that a detailed analysis should be given. The soft-coal mines of Illinois were at this time controlled by Francis S. Peabody and Frederick W. Upham, who was, as before shown, one of the members of the Illinois Council of Defense. Indisputably, something was wrong with the machinery of the production and distribution of coal in 1917 and in the subsequent years, even beyond the period of the war. America had no difficulty in selling Liberty bonds and no difficulty in commanding the man-power of the country to depart beyond seas, there to enter the trenches and to give their lives for the cause upon which America had staked her honor. It was altogether different with coal. Between 1915 and 1920, the bituminous mine capacity of the country was 1,000,000,000 tons a year and its actual production less than 500,000,000 in certain years, and was not as high at any time in that period as 600,000,000 tons. And, while the mine capacity was 1,000,000,000 tons per year, the average

price at the mine was something more than $3.50 a ton.

Though Mr. Mayer had not succeeded in carrying out the plan for the taking over of the mines, which he had formulated and presented to Governor Lowden and to the people with such vigor and clarity, he at least had done his part and done it well. His idea of public operation and control was embodied in the Federal legislation. The Federal Government assumed responsibility of the vast and intricate machinery of coal when it might have been better managed by the states if they had been allowed to manage it. For the coal difficulty continued after the action of the Federal Government and, in view of the capacity of the mines, it seems clear that this was not inevitable. It is curious now to note that Eugene V. Debs, many times the candidate for President on the Socialist ticket, came to sharp difficulty on June 16, 1918, for a speech that he made that day in Canton, Ohio, in which, among other things, he commented upon the coal famine in Ohio and elsewhere in America. Among other things he said:

"Again, they tell you that there is a coal famine now in the state of Ohio. The state of Indiana, where I live, is largely underlaid with coal. There is practically an inexhaustible supply. The coal is banked beneath our very feet. It is within touch all about us—all we can possibly use and more. And here are the miners, ready to enter the mines. Here is the machinery ready to be put into operation to increase the output to any de-

sired capacity. And three weeks ago a national officer of the United Mine Workers issued and published a statement to the Labor Department of the United States government to the effect that the six hundred thousand coal miners in the United States at this time, when they talk about a coal famine, are not permitted to work more than half time. . . . The coal mines now being privately owned, the operators want a scarcity of coal so they can boost their prices and enrich themselves accordingly. If an abundance of coal were mined there would be lower prices and this would not suit the mine owners. Prices soar and profits increase when there is a scarcity of coal."

His speech was directed principally against the profiteers of the war. In its course he had commented upon the sentence which had been passed upon Rose Pastor Stokes, who, he said, had been sent to prison for saying that the government could not at the same time serve the profiteers and the victims of the profiteers. It is little to say by way of approving Mr. Mayer's action and words that some of the coal operators should have gone to prison instead of Debs.

Though the Federal Government had taken over the coal situation, Mr. Mayer continued to act in whatever capacity he could as a member of the State Council of Defense. Measures were taken by local boards intended to assist the Federal control. Cook County organized a Fuel Administration Committee, in which Mr. Mayer was made the general counsel. This committee issued bulletins from time to time,

suggesting methods by which the effect of the coal shortage could be relieved, such as by keeping the temperature of rooms down to seventy degrees, by turning off radiators in rooms not in use, by saving electric light and by economizing in the use of hot water.

In April, 1918, Mr. Mayer was in Washington at a conference of state governors and business men on the subject of the education of aliens. In this conference he appeared as a member of the Illinois Council of National Defense and as a representative of Governor Lowden. In addressing the body he said that it had been found impossible in the educated and highly cultivated state of Illinois to obtain from the public authorities permission to hold patriotic meetings and that it was due to the fact that the mixed foreign population made it inadvisable that such public meetings should be held. In the course of his remarks he offered certain resolutions to the conference for adoption. These resolutions recited that there were a hundred races and nationalities in the United States and that 33,000,000 were of foreign origin and 13,000,000 were foreign-born; 5,000,000 did not read, write or speak English and 3,000,000 were of military age and were not naturalized, and that there were 1,500 foreign-language newspapers published in the United States which had a circulation of 11,000,000. The resolutions then proposed that all unnaturalized foreigners of the age of twenty-one years and upwards who were eligible to citizenship should apply

on or before July 1, 1918, for their first papers and should be required thereafter, for at least three years, to devote at least two hours of every week day during nine months of each year to the study of the English language. The resolutions further provided that all foreign-language newspapers should be required to publish in English, as well as in their foreign languages, such articles as should be supplied from time to time by the Bureau of Education of the United States as should have for their purpose the Americanization of such readers, and that an appropriate censorship should be established. One of the delegates to this conference proposed an amendment to the resolutions, requiring the suspension of all German-language newspapers during the period of the war. As the conference was merging into bitterness, Secretary Lane, who was presiding, intervened and urged a campaign of education, not one of bitterness. Mr. Mayer withdrew the resolutions which he had offered. There might be a difference of opinion as to the wisdom of some of the proposals made in these resolutions; but their patriotism cannot be questioned, and they were formulated at a time when the spirit of America was wrought to white heat on the subject of its unity and its integrity.

In May, 1919, Victory bonds were issued by the government, the sale of which was intended to help liquidate the cost of the war. Mr. Mayer's response to this call for more money illustrates very clearly his devotion to the country and to its cause. An editorial

had appeared on May 6, 1919, in the *Herald and Examiner* which evoked from Mr. Mayer a letter and a subscription. "I very warmly congratulate you," he wrote, "on the splendid editorial you published this morning about mothers who gave their sons to the war. You spoke the unexpressed thoughts of millions. I agree with you that 'it should be difficult for any man in this country to refuse these noble women when they say: "Buy Victory bonds to pay for the war that saved your country and killed my son." But mere words of approval are not valuable. I enclose to you my subscription for two hundred and fifty thousand dollars ($250,000) together with my check for $25,000, the usual initial payment. As this subscription is inspired by your editorial in honor of the Gold Star Mothers of this city, and is a feeble tribute to them, I request that this subscription be credited to Division 1, which includes the newspapers, and at the head of which division you are rendering such patriotic and admirable service."

Finally, when the war was long over but the war laws were still in force, Mr. Mayer raised his voice for their repeal and for the restoration of constitutional liberty. On January 1, 1921, he gave out an interview to the press in which he advocated an immediate return to peace conditions.

"There are two comparatively easy things," he said, "that lie within the immediate reach of Congress and which, if done, will aid to restore confidence and to improve commercial conditions. The war began and

was conducted with some great and fatal errors. It inspired drastic legislation that was destructive, for the time being, of some of the most sacred principles of American liberty and justice. The United States is to-day at peace all over the world except at home and in our courts of justice which hold that we are still at war with Germany. This travesty on American rights calls for immediate remedy. The Lever act, the espionage act, the conspiracy act, and the other congressional war statutes, should be repealed at once. Such action will reawaken our spirit of equality and the guarantees of individual right and will remove the crude, oppressive and obnoxious paternalism that has grown out of our war legislation. Its continuation on the statute books serves as a bitter satire on democratic government. But still more important to the industrial and manufacturing interests of this country is the enactment of a clear, plain and simple income tax law, based upon economic and true principles."

CHAPTER IX

SISAL LITIGATION—CONSTITUTIONAL CONVENTION—MR. MAYER'S SUDDEN DEATH

FROM 1915 to the date of his death in August, 1922, Mr. Mayer's professional labors were increasingly heavy and at the same time he was loaded with great responsibilities growing out of the war and its conditions, which prevailed to the end of his life. Also, the spiritual atmosphere of these times was charged with many exhausting passions. There was no place to turn where one did not encounter conflict, hatred, suspicion, fear, bitterness or sorrow, on account of the chaos and the tumult which existed. Unquestionably this moral environment had much to do with breaking down many strong men. Mr. Mayer was beginning to complain of great fatigue and to confide to his friends that his body felt old and worn. He received warning more than once that he should slow down his activities; but he was unable to see any way by which he could do it. He had now become the richest lawyer in the United States and was in the enjoyment of an income from his profession greater than that of any other lawyer in the country. His business ventures made along the way of his professional life had proven miraculously profitable. He had also invested in real estate; in particular he purchased with his brother-in-law in 1907 the valuable corner on Jackson Boulevard and Michi-

gan Avenue in Chicago, on which stood the Stratford Hotel. Something more will be said of this later in this chapter.

In 1916 Bernard A. Eckhart, who was the president of Bernard A. Eckhart Milling Company, was indicted in the Federal court for accepting rebates from the roads of the Pennsylvania system on shipments of flour and grain. Eckhart insisted that what the government claimed to be rebates were payments on switching charges made under a contract in existence since 1896. Mr. Mayer defended Eckhart, and, as in the case of the packers' indictment, presented no evidence by way of exculpation, but accepted the testimony of the government as to the facts in the case. Accordingly, at the conclusion of the government's case, Mr. Mayer made a motion asking that the court instruct the jury to find Eckhart "not guilty," which was granted and he was discharged.

In this year, Mr. Justice Lamar of the Supreme Court of the United States having died, Mr. Mayer was prominently mentioned for appointment to the vacancy, which evoked no particular response from him, as he never had cared to hold public office. He was so engrossed in his many interests, professional and financial, that nothing could have lifted him out of the life which he had led so long and taken him to the tranquil atmosphere of the great court, for whose work he was eminently fitted by learning and by experience.

At this time, too, that is, the winter of 1916, one of

the most important matters of his whole career was absorbing his attention. This involved the product called sisal, a fiber made from henequen, produced in Yucatan. In January, 1912, the Comision Reguladora del Mercado de Henequen was organized as a corporation under a decree of the Legislature of Yucatan, having for its object the protection of the henequen or sisal industry, the principal industry of that state. The charter provided that the affairs of the corporation should be managed by the Governor, and of which board the Governor himself was made the *ex-officio* chairman.

In the summer of 1915, Sol Wexler, the president of the Whiting-Central National Bank, and Lynn H. Dinkins, president of the Interstate Trust and Banking Company, both of New Orleans, were in conference with representatives of Comision Reguladora for the purpose of securing financial assistance in handling and marketing the sisal crop of Yucatan. They requested a loan of $10,000,000 for a term of five years. Wexler and Dinkins, believing the business to be sound and that New Orleans would benefit by being made the principal port of entry of the sisal crop, decided, if possible, to undertake the business. Finally a contract was entered into between the Comision Reguladora on the one hand and Wexler and Dinkins on the other, for the loan of $10,000,000, which was to be secured by sisal, stored in public warehouses, satisfactory to the lenders of the money. To carry out the contract, Wexler and Dinkins incorporated a company called

the Pan-American Commission Corporation, with a capital stock of $1,000,000, which was fully paid in cash and which was deposited intact in the bank as a guarantee to the Comision Reguladora that the contract would be fulfilled. Subsequently, the war conditions caused a great advance in the price of competitive articles like manila hemp, jute and kindred products grown in Manila, New Zealand and other parts of the world, which was reflected in the price of sisal.

Sisal is used for the manufacture of binder twine and, as the Pan-American Commission Corporation became a going concern, the farmers throughout the west of the United States, influenced by one of the dominating corporations which had theretofore controlled the purchase of sisal output in Yucatan, protested to the Congress of the United States against what was stated to be an unwarranted advance in the price of sisal and the proportionately higher cost of binder twine. This was at a time, as it happened, when the farmers themselves were receiving two hundred per cent advance in the price of crops; while the Yucatan farmer, who imported nearly all his necessary articles from the United States, was compelled to pay similar advances on importations. The Senate made an investigation into the relations between the Comision Reguladora and the Pan-American Commission Corporation and, finally, as the public mind was inflamed, the Attorney General of the United States caused a suit in equity to be brought in the United States District Court for the Southern District of

New York under the Sherman Anti-Trust Law and the Wilson Tariff Act against the Pan-American Commission Corporation, Wexler, Dinkins and the Comision Reguladora as defendants.

Mr. Mayer had been the attorney of Wexler and Dinkins prior to the formation of the Pan-American Commission Corporation and was retained as its counsel. Something more than two years of Mr. Mayer's time was taken in the arduous questions involved in this far-reaching litigation. The attempt of the farmers in Yucatan to find a better and freer market for sisal was a part of the general revolution in Mexico.

Up to this time peonage had existed in Yucatan and the farmers of that state claimed that they were the slaves of a monopoly which operated in the interest of two powerful American corporations, to which the Yucatan farmers sold sisal for one-half the amount which was exacted by those corporations from the American grain growers. According to pamphlets issued and other forms of publicity, the farmers of Yucatan welcomed the formation of Comision Reguladora and the contract which it had made with the Pan-American Commission Corporation, and believed it to be a plan by which they would be freed from the power of the American corporations. They declared, however, that this long desired result had been effected only by overcoming great obstacles, among which was the rebellion encouraged in their own state by those who had fattened off the old monopolies in

America; and by their own efforts in quieting threats of military intervention on the part of the American government. They also insisted that they had been hounded by detectives hired by the American corporations, and had been threatened by bankers who desired to give financial assistance to them. They hailed the new arrangement as one of the distinctive achievements of the revolution for Mexico's freedom.

In February, 1916, Mr. Mayer prepared and filed with the Attorney General of the United States an elaborate brief of the law which was intended to repel the charge that had been made against the Pan-American Commission Corporation and the Yucatan corporation that they were violating the Sherman Anti-Trust Act and the Wilson Tariff Act. He began this brief with ominous words. "I have heretofore advised you," he wrote, "of a sudden attack of illness while I was in New York which has prevented an earlier discussion on my part of the legal questions involved in your letter of the seventeenth ult." He had been over the questions involved in this matter so many times before, and was so thoroughly conversant with the legal authorities which explained and solved them that this brief is remarkable for its pointed condensation and its clarity. He showed that if the Yucatan corporation and the American corporation had entered into a conspiracy, which he denied that they had done, it was not amenable to the laws of the United States, since in the American Banana Company case, decided by the Supreme Court of the

United States, it was held that a conspiracy in this country to do acts in another jurisdiction did not draw to itself those acts and make them unlawful, if they were permitted by the local law. In connection with this holding he pointed out the matter of fact that the Yucatan corporation was a governmental agency and was not a corporation for profit or otherwise, but was a mere commission or arrangement of the state of Yucatan. Then he showed that since, as a primary proposition, there could be no conspiracy without two or more persons to form it, there was no conspiracy in the United States, since the contract in question was between the American corporation and the Yucatan corporation. He referred to the numerous decisions of the Supreme Court which held that the contract which was forbidden by the United States laws was one whose direct and immediate effect was a restraint of trade or commerce and, finally, he used this language: "It is no part of the agreement, directly or indirectly, of the Pan-American, to maintain, preserve or keep the price of sisal up, nor to endeavor to help keep the price up. The contract simply furnishes the service of the Pan-American as a factor, a commission merchant, a lender of money or of credit. The Pan-American is not obligated nor does it undertake nor may it in any way control, fix, regulate or advance the price. It has no power or authority to do so, and could not do so under the contract, if it made the attempt. The contract has nothing whatever to do with and makes no reference to the price of sisal. When the

Comision Reguladora has repaid the moneys loaned to it and the commissions to the Pan-American, the sisal becomes as free as air. The only restriction as to price, in the entire contract, is that where the sisal is held by the Pan-American in pledge, then the Comision Reguladora shall not sell for less than the amount owing to the Pan-American. . . ."

The reasoning of this brief of Mr. Mayer, addressed to the Attorney General, was not persuasive; and, as before noted, the United States filed its bill in the District Court in the Southern District of New York. Answers were filed by Mr. Mayer for Wexler and Dinkins and the Pan-American Commission Corporation, and voluminous testimony was taken during the two years, before final disposition of this suit, in various parts of the country—in Chicago, Boston and New York—and the depositions of numerous witnesses were taken in the state of Yucatan. Finally, on July 29, 1918, the case came on for trial before Judge Charles M. Hough, a judge of the Circuit Court of the United States, sitting in the old Colonial Court House of Windsor, Vermont, near the summer home of Judge Hough. Mr. Mayer was in New York City just before the case was called and motored, with his associate, David F. Rosenthal, to Windsor, to present arguments in behalf of his clients. He made a motion on behalf of Pan-American Commission Corporation and Wexler and Dinkins to dismiss the bill as to them, on the ground that, since January 2, 1918, the question sought to be raised on the record had be-

come altogether moot and that there was no longer a subject matter upon which the judgment of the court could operate. The court, in ordering the dismissal of the bill, agreeable to Mr. Mayer's motion, delivered an opinion, in which he said: "Let it be assumed that in 1915 there was a conspiracy, i.e. an agreement, to work together to raise prices. There is positive disproof that any such conspiracy or any meeting of minds of any kind, now exists or did exist when this bill was filed. Nor, humanly speaking, can there ever hereafter be any combination between these two sets of defendants. . . . It is held as too plain for argument, that the paper writings evidencing the ultimate contractual relations of the Reguladora (as represented by Rendon) and Wexler *et al.* do not *per se* prove any unlawful intent, or any intent other than one to make money by charging a reasonable rate for a large service. Every pound of sisal was or might be burdened with a loan or charge that may be stated thus: $\frac{3.6}{375}$ cents plus 112.5 cents equals the Pan-American Company's maximum interest in every or any pound of that to which the alleged conspiracy relates. Having regard to sisal prices before or since Reguladora formation, such a charge or burden could not in its nature, affect the price at all. The claim of conspiracy rests on one of two propositions; at least I can discover no other even suggested by the Government. Either any one who lends money to a monopolist becomes a partner or conspirator with him, by the act

of loan; or the conspiracy depends on some spiritual or sympathetic emotion actuating the loan. The first proposition is not, I apprehend, relied on,—and is bad law anyhow. As to the second, it seems to me no more than a decent regard for citizens accused of wrongdoing to record my opinion that this record contains no evidence whatever of any sympathy with or desire to assist anybody who wished to raise the price of sisal in the United States over November, 1915, price, —on the part of Messrs. Wexler and Dinkins. It is natural to inquire,—why and how did the price raising efforts of the Reguladora succeed? Here, as was done by the Supreme Court, we can and must take judicial notice of the present war, and its more notorious results. Not much judicial notice need be taken—for the evidence shows the movement and use of manila hemp which is what really controls the price of sisal. The inferior fiber must find its own level, with reference to manila prices and supply. In my opinion the one thing (except Alvarado's iron hand) that has put up the price of sisal, is the lack of shipping facilities to move manila, and the enormous demand for manila for marine rope. This is just as much the result of a war, of *the* war in which *we* are now engaged, as the situations recognized as 'staying the hand of the court.' . . ."

The arguments and the trial were conducted in the sleepy, sultry little town of Windsor, Vermont, far from the sisal plantations of Yucatan. The decision

of the court was rendered in New York in August of 1918.

It was during the period of time now being considered that Mr. Mayer had charge of the interests of the distillers and the brewers which war-time prohibition and the Eighteenth Amendment so disastrously involved; this has been treated in a separate chapter. After the Federal Act touching the liquor interests, the state of Illinois passed a Search and Seizure Law, intended to fortify the provisions of national prohibition and to do it with teeth. Mr. Mayer took his last stand for constitutional government with reference to these interests before the legislature and before Governor Lowden.

As a consequence of the prohibition movement and the adoption of the Eighteenth Amendment, the Legislature of Illinois, in May, 1919, was considering the passage of a Search and Seizure Bill of very drastic provisions which it did, in fact, subsequently make into law. Mr. Mayer was called upon to address the lower house of the General Assembly upon various phases of this law, and was thereby given an opportunity to present objections to it. In this address he attacked the pending bill with great ability and acuteness. "I shall avoid all discussion of the Wet and Dry questions as such," he said. "The Search and Seizure Bill attempts legislation which at this time is fundamentally wrong, vicious and premature. I fear you do not appreciate the crisis that impends. I warn you, the press and the people, that there is a crisis

ahead. All I want you to do is to use your eyes and read the bill. It is most dangerous and mischievous. The conflict and confusion that the bill will create is probably without a parallel in the last fifty years' legislative history of this state. It will, if enacted at this time, overturn the orderly administration on a vastly important and far-reaching subject, and produce disturbing results that cannot now be measured." Further on he took up Section 1 of the bill. "It provides," he said, "that intoxicating liquors shall include all distilled, spirituous, vinous, fermented or malt liquors which contain more than one-half of one per cent by volume of alcohol. This definition is physiologically, chemically and commercially untrue." Addressing himself to the confusion that would result from the law, he said: "I need not paint a picture of the outrage upon liberty, law and decency that such a law will create. Most householders in the city of Chicago, to say nothing of hotel and restaurant keepers, will be subject to insidious charges and attacks that will equal the methods of the perfidious Inquisition and Star Chamber. The fundamental, underlying principles of liberty will be scattered to the winds by this legislation. The rights of the people to be secure in their persons, houses and effects will have become lost and despised. One's person and property must be protected in this free country against the operation of bigoted and treacherous agents as well as against the hysteria of the mob and the anarchists. Any irresponsible person, be he

stranger or foe, may make the complaint and cause the search warrant to issue. . . . I appeal not only to your sense of right and justice but also to that of all the citizens of this state."

The Search and Seizure Bill, however, having passed the General Assembly, was sent to Governor Lowden for his signature. Mr. Mayer, notwithstanding all his other arduous duties and preoccupations, journeyed to Springfield and made an appeal to the Governor to veto the bill. His efforts, however, were unavailing. The Governor signed the bill and it became one of the bad laws of Illinois.

For at least a decade before the year 1919, there had been agitation, particularly in the city of Chicago, for a new constitution of the state of Illinois, in order, as it was claimed, to make legal provision for the expanding interests of the metropolis. Also, particular reasons were urged by the state at large for the revision of the old constitution of 1870. Mr. Mayer took a great interest in this project. His conservative principles impelled him to effort to retain the good features of the old instrument, those which expressed landmark achievements of liberty and the rights of property against doctrinary innovation; on the other hand, there were demands made in behalf of Chicago which appealed strongly to him. The delegates to the proposed Constitutional Convention were elected by the people and Mr. Mayer was sent from the First District. In due time they assembled in Springfield and held many laborious sessions until

their work was done, which was in the early part of 1922. Mr. Mayer took the most active part in this work, at a time, too, when his professional labors were very great. His ambidexterity was probably taxed greater now than at any other period of his life, and he did not live to see what the people did with the work of the Constitutional Convention. It was overwhelmingly defeated at the polls at an election held in the late fall of 1922.

To top all his great labors in this period of his life, he was called to the assistance of the packers whom he had defended with such signal ability in 1911, and for ten years before that. In January, 1919, he was in Washington with J. Ogden Armour, endeavoring to prevent the passage of the Federal Trade Commission Act, which permitted by its terms the government to license the operation of the packing business, and attacking the constitutionality of any such enactment. In February, 1919, he appeared before the Senate Committee and proposed the creation of a Federal Commission to regulate the packing industries, just as the banks were then under the control of the Federal Reserve Board, and as the railroads in peace times were under the supervision of the Interstate Commerce Commission.

As had been his habit for many years, he was back and forth between Chicago and New York in devotion to the great interests which found his counsel and his assistance indispensable. And at the same time he was at the head of the largest law firm in Chi-

cago and in touch with its diverse practice. He had built up during these years the most efficient and the largest law office in Chicago and perhaps there was none in the United States so large. By this time there were a great many partners in the firm outside of those whose names appeared in its title. In making a youth a member of his working force, he was accustomed to say to him, "I want you to look to the time when you will be my partner and to work to that end and to prepare yourself for that success." From these beginnings many young men, starting as law clerks, had been graduated to the position of partners and thus, at this time, the first-rank strength of his firm consisted of his brother Isaac, his brothers-in-law, Carl Meyer and Abraham Meyer, Alfred S. Austrian, who had started at the bottom and who in the school that Mr. Mayer had established in his office had become an accomplished lawyer and a brilliant advocate; also Henry Russell Platt, who came into the firm in 1909, after an important experience at the bar and whose education and ability added greatly to the strength of the organization. In a word, Mr. Mayer had created a working system which represented the new era in the practice of law. It was distinguished by a scientific order, by a great library, by infinite thoroughness, by alert intelligence, by attention to detail, by every facility useful to lawyers, by the employment of all modern equipments and, finally, by unflagging industry. Only by these means and by this assistance and coöperation was Mr. Mayer able to

carry on the titanic business which culminated in these years. Nor should it be omitted to be said that ideals of impeccable integrity with clients and with courts were the guiding standards of this great organization and of all of its members.

In 1921 Mr. Mayer consummated the deal in behalf of the Great Lakes Transit Corporation for the purchase of the Lehigh Valley Company's lease-hold docks and warehouses in Chicago, covering 105,000 square feet on the railway and river front east of the Kirk Soap Factory. He was very enthusiastic over the success of this plan and in an interview given out to the press he said: "The Great Lakes Transit Corporation will make Chicago a regular port of entry and call in the spring and will buy as many ships as are needed to handle the traffic. At the start there will be three regular weekly arrivals and departures. The ships will carry bulk and package freight to Buffalo where the corporation connects with rail lines to New York. It is estimated that the corporation will handle as much as 4,000,000 tons of freight each season in and out of this city."

In 1911 the Continental and Commercial National Bank of Chicago, of which Mr. Mayer was the counsel, effected a community interest with the Continental and Commercial Trust Company and the Hibernian Banking Association, both state banks under the laws of Illinois, through the act of the stockholders of the Continental and Commercial National Bank, who bought the stock of the two state banks. About the

same time the National City Bank of New York was reported to have caused the formation of a subsidiary corporation called the "National City Company," which was to be a holding corporation for the National City Bank. When the consolidation of the banks in Chicago referred to was effected, the Solicitor General rendered an opinion to the Secretary of Treasury, Hon. Franklin McVeagh, impugning the legality of the Chicago consolidation. In consequence of this situation, Mr. Mayer appeared before the Secretary of Treasury in August, 1911, and argued for the legality of the arrangement which had been carried out in Chicago. He clearly showed the difference between the legal status of a purely holding corporation and a community of interest which had been formed by the stockholders of one bank buying and owning the stock of two other banks; and was successful in having the difference recognized by the Secretary of Treasury. This early merger of financial interests in Chicago resulted, in January, 1922, through the legal efforts of Mr. Mayer, in the taking over of the Fort Dearborn National Bank and the Fort Dearborn Trust and Savings Bank by the Continental and Commercial Banks. It was called at the time the "Sixty Million Dollar Bank Absorption." After it was consummated, Mr. George M. Reynolds, the president of the Continental National Bank, gave out an interview in which he said, among other things: "The Continental and Commercial Trust and Savings Banks have taken over the Fort Dearborn National

Bank and the Fort Dearborn Trust and Savings Bank, respectively, as at the close of business December 31, 1921. The Fort Dearborn had a capital stock of $5,000,000, a surplus of $2,000,000 and undivided profits of over $1,000,000. The Fort Dearborn Trust and Savings had a capital stock of $500,000, surplus of $250,000 and undivided profits of $262,000." The consolidation was reported by the press to have averted one of the most serious crises in banking affairs that had ever threatened the LaSalle Street district. Several examinations had been made of the Fort Dearborn Banks by the clearing house of Chicago as early as November, 1921, and they were advised to adjust their loans. About the same time the officers of the Fort Dearborn banks admitted that they were facing a precarious situation and had asked the First National Bank of Chicago to take them over. Finally, on January 2, a great assembly of financial notables came together. Among those present were the Forgans, the Reynoldses, J. Ogden Armour, John J. Mitchell, Frederick H. Rawson, Marshall Field, Ernest A. Hamill, B. A. Eckhart, and some others of lesser notability, and Mr. Mayer as financier and as legal counsel. At one time during the conference the transfer of these banks might have been made to the First National Bank, but finally the offer of the Continental and Commercial Banks, represented by Mr. Mayer, was accepted and a great army of clerks and help immediately set to work to transfer the books and the money. The financial peril

which threatened was cleared and the Continental and Commercial National Bank became the greatest financial institution west of New York City.

Swiftly following upon this great labor, Mr. Mayer was in Washington in the Supreme Court, attacking the constitutionality of portions of the law regulating the packing industry. This was the latter part of March, 1922. He arraigned the interference of Congress in private business with pointed energy and with his usual thoroughness and legal mastery. He was representing the stockyards dealers, numbering about two thousand, and doing an annual business of about $1,000,000,000. He insisted on this occasion in the Supreme Court that the portion of the law which gave the Secretary of Agriculture power to regulate the business of dealers was unconstitutional and should be so held by the Supreme Court. He contended that the dealers were not engaged in interstate commerce and hence did not fall within the jurisdiction of Congress under the commerce clause. In the course of his argument he said, "The unprecedented encroachments of Congress upon internal affairs since the war has found its apex in this law."

And so, without rest, he worked on in the summer of 1922; and in the hot days of August he was endeavoring to effect a gigantic steel merger, intended to result in the creation of a rival of the United States Steel Corporation. Whether he thought that his great energies could not be exhausted, or whether he took the chances of breaking under the great strain to

which he was subjecting his constitution, is a matter of speculation. It is probably nearer the truth to say that life to him was the work which he had loved so long and to which he devoted himself so unreservedly; and without the work, there was nothing other than his family for which to live.

The human soul, in its deepest recesses, feels that, however life go, it is caught in an inextricable fate and must work to the last. At this time Mrs. Mayer was traveling in Europe. His two daughters had been married for a number of years and were living in New York City. Mr. Mayer was not privileged to see the beloved grandson except on the occasions when he saw him in New York or on visits when the boy was brought to Chicago by his parents. As he had done all along, Mr. Mayer was sending to this beloved grandson whimsical and jocular notes and messages, and humorous clippings from newspapers.

Though he was now on the heights as a lawyer and as a financier and was dreaming of the day when the corner of Jackson Boulevard and Michigan Avenue would be occupied by the finest hotel in the world and was planning to this end, in spite of all these great achievements and alluring dreams of the future, things that are so fascinating to young men entering their professional life, there was now something infinitely lonely and deeply moving about Mr. Mayer. He was more and more complaining of fatigue. He was constantly warned by his physicians to relax his

activities. There were very serious danger signals sent forth by his tired body.

On the evening of August 13, 1922, after a long and laborious day in his office, busied with the thousands of things that pressed upon him, he went to the Blackstone Hotel where he and Mrs. Mayer had resided for a number of years. After dining he dismissed the butler and started to read. The next morning the valet came to the door, according to custom, and found it locked. He went away and returned after a time, and being apprehensive because the time was past the hour when Mr. Mayer always arose, he entered and found Mr. Mayer in the room with a look of peace upon his face, turned to the couch where he had been lying. His glasses were discovered inserted between the leaves of a magazine, marking an article which was entitled "The Flight of Reality."

All along the way of life there are strange coincidences and esoteric events which seem to arise as symbols of some great significance or of some undiscovered event.

Chicago, the law, great business, America, the long years of study and hard concentration, of great success at the bar and in finance, in the acclaim and the respect of his fellows and the world at large, may, in some sudden clairvoyance of death, have become the "Flight of Reality." All these things may, in a moment, have vanished into the light of something that made the old reality not real at all. The headlines of August 14, 1922, which carried the announcement of

Mr. Mayer's death also brought word of the passing of Lord Northcliffe in England, broken and exhausted at last, as Mr. Mayer was, by great labor and responsibility.

CHAPTER X

TRIBUTES, APPRAISALS, FUNERAL

THE funeral of Mr. Mayer was delayed until the arrival of his daughters and Mrs. Mayer from Europe, which occurred on the twenty-fourth of August. In the meanwhile the press of Chicago, Illinois and the whole country was filled with tributes to his memory and estimates of his character and career. Various bodies also passed memorial resolutions; and telegrams of condolence by the hundreds from all parts of America and the world came to Mrs. Mayer and the stricken family.

Among the many expressions of grief and appraisal, those of judges and lawyers of his own city may be quoted as furnishing the surest evidence of his place at the bar and the esteem in which he was held. Federal Judge George A. Carpenter said: "The Chicago Bar has lost a notable figure in the death of Mr. Mayer. He was learned and resourceful. As a friend, he was genial, generous and sympathetic. He was nationally known and will be nationally missed."

The State's Attorney of Cook County, Hon. Robert E. Crowe, paid this tribute: "Mr. Mayer's death is a great shock to me. I have known him for years and began my legal work in his office. He was a great lawyer and a true patriot. Not only has the legal profession lost a leader but the country has lost a great citizen."

The County Judge of Cook County, Hon. Frank S. Righeimer, used these words: "Mr. Mayer was an honor to his profession and his name and career will always be an inspiration to rising generations of Chicago lawyers."

The Federal District Attorney, Hon. Charles F. Clyne, said: "Levy Mayer and I had any number of legal battles, all of which gave me an opportunity to intimate study of the man. He was thoroughly a great lawyer in any phase of a lawsuit. But in the matter of a law argument to a judge or judges, he was, in my estimation, the most persuasive and fascinating lawyer in this or any other bar in the United States."

Hon. Charles S. Cutting, for many years the highly esteemed Judge of the Probate Court of Cook County, paid this tribute: "I knew Mr. Mayer for years. I can remember him forty-five years ago when he worked as an assistant in the library. He was a great power in legal circles and his death creates a tremendous vacancy."

Hon. Harry M. Fisher, one of the Judges of the Circuit Court of Cook County, said: "The country has lost one of the men who served it best in the days of distress."

Hon. Samuel A. Ettelson, at the time the Corporation Counsel of Chicago, said: "I regard Mr. Mayer as one of the greatest lawyers who ever lived. He was a legal genius."

The Attorney General of the United States wired Mrs. Mayer as follows: "You have my sincere sympathy in the loss of your distinguished husband."

Hon. A. D. Lasker, chairman of the United States Shipping Board, sent this telegram to Mr. Isaac H. Mayer: "I cannot adjust myself to the shocking news of your brother's sudden passing away. To you as his brother and through you to his associates, I want to speak the warm admiration I feel, as did all who came in contact with him for his outstanding abilities. He was a giant among men and his going marks the passing not only of a leader of your community and of the American Bar, but of a nation-wide figure."

Later Mr. Lasker wrote to Mrs. Mayer as follows: "I recall talking with him one day when he used the epigram 'facts are the basis of life.' It seems to me that this utterance represented the character of the man. He wanted to know and once he knew he would act. He was skillful in the handling of a bad case and effective in the handling of a good case. While I was in Washington I found the memory of him persistent. Members of the Supreme Court of the United States and great lawyers remembered him as a man of the highest integrity, as a lawyer of brilliant ability, and as a citizen whose first thought was the honor of his country."

Mr. Chief Justice Taft of the United States Supreme Court happened to be in Chicago on the day of Mr. Mayer's death. In an interview he said: "I was greatly shocked. I have known Mr. Mayer a great many years; in fact, from the time in 1892 when I was on the Circuit Bench. His passing is a great loss to our profession."

The Attorney General of Illinois, Hon. Edward J. Brundage, contributed this testimonial: "I can only express my deepest regret. Mr. Mayer was a man who brought great credit to the Bar of Illinois and he was one of the greatest lawyers of the day. As a man, he was delightful personally and his friends enjoyed his acquaintance. He was sincerely public spirited and generous with his time and money in all worthy public movements, though he was modest and unostentatious in such matters."

There is something impressive and intimate in the words of Mr. Austrian, his partner. "Levy Mayer," he said, "was a prince among men. His loss has come as so personal a blow that I cannot yet bring myself to speak of it. I came here from Harvard as an office boy thirty-one years ago and I knew him for what he was, clean and honorable and big."

His first partner, Adolf Kraus, paid this tribute: "When Levy and I, more than forty years ago, joined forces, he said, 'There is plenty of room at the top.' When the news of his death reached me the fact that in his career at the bar he had reached the top was to me, as it surely must be to his family, a slight consolation."

Ex-Governor Lowden, by way of memorial comment upon Mr. Mayer's work as a member of the State Council of Defense, wrote: "By virtue of his great ability he became at once in effect legal adviser of that great body, of course without pay. The zeal for his client which had always characterized him in

private practice was now directed to the interests of the state in the great work of the Council of Defense. I think I may say that in his long and distinguished career as a lawyer he had never exhibited a finer spirit, devotion or greater ability than in his new position of counsel for a great public body. I was impressed all during the war with his single-minded devotion to the cause, wholly unmindful of the fact that his opinions and advice might conflict with the interests of some of his private clients. In this capacity he rendered a very great service to the State of Illinois."

General Leonard Wood, Governor of the Philippines, wrote Mrs. Mayer as follows: "Mrs. Wood and I were much grieved and shocked to learn of Mr. Mayer's sudden death. When I last saw him he seemed to me to have many years of useful life before him. . . . We both look back with much pleasure to our association with your husband and our life in Chicago, and I shall always appreciate his hospitality and friendship."

Hon. Theodore Brentano, Minister to Hungary, wrote as follows: "I regret his death deeply, which is in the nature of a calamity as he was one of America's most eminent lawyers. I always was an admirer of his talents and I prided myself on his friendship."

Charles H. Wacker, one of Chicago's most eminent citizens, who has had much to do with the æsthetic development of the city, wrote Mrs. Mayer: "I always cherished his friendship, and always looked upon him as a stalwart and vigorous type of a man—the type of

a man whose example will be an inspiration to others, and the kind every city must have if it is to grow spiritually, intellectually and materially."

John H. Wigmore, the Dean of the Law School of Northwestern University, made this estimate of Mr. Mayer's standing: "I want to express my personal opinion of the extraordinary and unrivalled intellectual eminence achieved by him and conceded by his fellow members of the Bar, who now lament with you the premature termination of his brilliant professional career. The status achieved by him was unique, and in its combination of both local and national prestige is not paralleled by any member of the Chicago Bar in the annals of the past."

Many messages of intimate consolation came from distinguished and celebrated people over the country, from Alice Nielsen, from Fannie Bloomfield Zeisler, who at the time of Mr. Mayer's death, in company with her husband, Sigmund Zeisler, was in Europe. One of the most eloquent tributes to the dead came from Horace J. Bridges, the distinguished lecturer of the Chicago Ethical Society, in which he wrote: "Life is terribly uncertain, and at best is tragic. Nature seems to take an ironical delight in perfecting the finest of her products and then shattering them. We cannot possibly understand why a brilliant genius, a great mind, a distinguished citizen like your husband, should be thus cut off in a moment without warning, at the height of his powers and achievements and of his usefulness to the nation. It is a baffling mystery

before which we can only bow our heads. But the consolation is that no blindness, no vicissitude of time or chance, can wipe out the influence of such a man upon the lives of those who knew him; most especially upon those who, like yourself, were nearest and dearest to him."

Mr. J. Ogden Armour paid this tribute to Mr. Mayer, when asked what it was that made the legal power of Levy Mayer: "You cannot describe any really able human completely. The most you can do is to keep watch on a few of the high spots, as you see them. Levy Mayer, who was my friend first and my lawyer second, was a man of extraordinary power, mental and physical. The energy, ability and fighting qualities that are born in the brain cannot be analyzed. But those things I and everybody else saw in Mr. Mayer, who for years stood unconquered and unsurpassed as a fighting leader of his profession. First of all, his heart and every ounce of his mental energy were in his work. No astronomer ever swept the heavens for a new star or planet more earnestly than Mr. Mayer studied his law books for a new point or a new argument, a new strength for his own side, a new weakness in his adversary. He liked his work, lived his work, breathed it, slept it, dreamed it. And that is the foundation of all great success. No man has in him more than one single thing of real importance. And unless he devotes ninety-nine per cent of his entire mind and body to that one thing, in perfecting it, he will not be heard from. Whether you take a cow in

the field eating grass, a hen on the nest, or a scientist in his laboratory, you will find all three concentrated, one on milk, the other on eggs, and the third on science. Mr. Mayer's greatest quality, next to the fact that he put ninety-nine and ninety-nine hundredths per cent of himself into his work, was his courage, his coolness. The greater the emergency, the cooler he became. He might become excited, or seem to, about a small thing. He became as cold as ice, and as deliberate as a moving glacier when it came to a really big thing. Like all men of power and courage, he inspired courage and power in others. When you talked to him about a piece of work that he had on hand, he gave you this positive impression. Many things might happen except one. And that one thing that could not possibly happen was failure. His office was not a mere ordinary law office. It was what you might call a gigantic legal department store. He was at the head as manager. He had associated with him young men and old men, lawyers old fashioned and new fashioned. He had the right man for this case and the right man for that. He himself was the right man for every case. He could talk to a jury of twelve men with such eloquence as to make them acquit a wife-beater. He could talk to the highest judge, and end by convincing him that his, Mayer's, view of the constitution was the view that dwelt in the mind of every human being connected with the writing of that constitution. In working for property rights Levy Mayer was a worker for civilization. But he worked for property rights, big

and little. When farmers holding their land as tenants were threatened with unjust dispossession he was ready to work for them as I happen to know, without charge, and as earnestly as he would have worked to save from confiscation the property of the richest man in the nation. He believed first of all in property rights, which is the right of a man to himself, the right of each individual to a happy life, and to a chance to fair treatment and even justice. Levy Mayer was a dynamo. You could tell him what you had in mind, put the case before him clearly, then go to sleep and forget it. Waking or sleeping, eating or appearing to play, you might be sure the thing intrusted to Levy Mayer was never out of his mind until it was out of court, settled, and settled the right way. He was a great lawyer because he was a great fighter, a man of great courage, constant study, and of real devotion to duty."

Mr. Benjamin F. Richolson, a notable member of the Chicago Bar, paid this tribute to Mr. Mayer: "He was a man who freely gave of himself unsparingly. He was also very tolerant. I have seen him in Court when after fairly overwhelming his opponent, he would never stoop to ridicule or 'make fun' of opposing counsel but would rather point out that the real point might easily be missed and make excuses for him in a kindly way. Mr. Mayer could not but see and understand his great superiority over the great majority of his opponents, yet this never made him arrogant, intolerant or self-opinionated. He was thorough

in all that he undertook. I remember vividly an occasion a short time ago, just after the question of Woman's Suffrage had been settled in favor of the women. The question came up before one of our courts as to whether in Illinois women had a right to, or should, serve on juries, either in civil or criminal cases. The judge being anxious to be absolutely right in his decision on this important question, and being of course acquainted with Mr. Mayer, asked him if he would look into the matter a little and let him know his conclusion and, if he could conveniently, give him some authorities on the subject. With his characteristic thoroughness, Mr. Mayer at once prepared a brief and, in addition thereto, he appeared personally in open court and delivered an exposition of the law covering that subject, which the court, after hearing it, pronounced a classic, and in this the writer, who was so fortunate as to hear it, agreed fully. He did not slur over the matter because he did it as a favor without any money consideration, but gave it the same thorough and conscientious consideration as he would have done had a large fee been paid him. In other words, Mr. Mayer maintained that anything that was worth doing at all was worth doing well."

Hon. Jesse Holdom, one of the Judges of the Superior Court of Cook County, had this to say of Mr. Mayer: "From the time he commenced practice he was active both in the courts and in his office. He was a valued counselor, having a quick perception and a wonderful mastery of detail. He was a great student

and had a wonderful faculty for research. He was a vigorous advocate, equally convincing before either jury or judge. He shone the brightest when he was hardest pressed. He was a public spirited citizen and gave himself and of his means in every movement for the good of the city and of humanity. He was a lover of the fine arts, with a taste for literature and music. He was a strong advocate of the Allied cause in the great World War and after this country's entrance into it was active in war work and a large subscriber to war bonds. To his friends he was a delightful companion, and generous to a fault in bestowal of favors. He shed much sunshine along life's path and he will be sadly missed by many. The bar has lost one of its bright lights in the passing of Mr. Mayer and society and humanity a kindly good friend."

Mr. Oscar G. Foreman, chairman of the Board of The Foreman National Bank of Chicago, after saying that it was his privilege to have been associated with Mr. Mayer for thirty years as a client, added: "I know of no man more considerate or thoughtful of the feelings of others than Mr. Mayer. Busy as his life was by the manifold obligations imposed upon him in the active practice of a profession, which accorded him one of its leaders, he, nevertheless, always had time to lend a helping hand where his help was most needed. A brilliant, resourceful lawyer, his talents were at the disposal of those unable to pay for them. I recall an incident a great many years ago, when a young man possessed of a neighborhood store,

who had built up quite a substantial good will in connection with his business, so that he was enabled to make a nice living out of his store, was threatened with the destruction of his business by reason of the conduct of an avaricious landlord, who was seeking to terminate his lease and repossess himself of the store. The loss of that store would mean the loss of the business and the livelihood for this man. The situation was presented to Mr. Mayer, and immediately all of the resources and talent of his giant mind were placed back of this modest storekeeper in his fight for possession of the premises against the avaricious landlord. He gloried in an opportunity to help the young lawyer. Another incident which I recall many years ago: A young lawyer, working for his employer all day and all through the night on an important transaction, was called upon during the early hours of morning to draw a paper in connection with the deal. The young lawyer, having worked all day and all night without rest or sleep, made, what was then supposed to be, a mistake in one of the documents prepared, and an attack was made upon the deal by reason of this *supposed* mistake. The young lawyer, distracted by the thought that possibly the deal might be upset through an error of his, finally had the matter submitted to Mr. Levy Mayer. Mr. Mayer again threw aside his business, brought all of his talents to command the situation, fought the matter out in the Federal Courts, resisted the attack, sustained the validity of the documents prepared by

the young lawyer and then refused to accept a fee. Busy as a busy lawyer could be, he always found time to render a service to others. He never knew when it was necessary to rest. It seemed to his friends and associates that he never rested. He was an indefatigable worker."

Mr. J. E. Tilt, at one time treasurer of the Illinois Manufacturers Association, related the circumstances under which Mr. Mayer became counsel for that important organization. "I as treasurer," he wrote, "was instructed to see Mr. Mayer and induce him to act in that capacity. I told him we did not have much money, and that he could not expect a very large fee. He said, 'Never mind about that. You can pay me what you like and when you like.' At the end of a year, during which he had done a great deal of work and given many valuable opinions, we paid him fifteen hundred dollars. He was very loyal to his friends. I remember a few years ago when calling on him I urged him to take a rest. He had then acquired an ample fortune. He said he had ceased to take on general business, but he was at the service of his friends at any time, day or night."

Silas H. Strawn, the senior member of the large law firm of Winston, Strawn and Shaw of Chicago, an organization of long standing and with which many notable lawyers from time to time were connected, had this to say: "If I were asked as to what were Mr. Mayer's dominant characteristics, I would say his indefatigable industry and his intense loyalty to his

clients. Of course we all knew that he had a very unusual mind, but oftentimes so brilliant a mind as he possessed does not go with the tireless industry which he at all times manifested. Doubtless had he worked less and played more, he would be alive to-day. His tireless industry was not because he needed the large income which he always earned, but because he loved his work so intensely that his work became a pleasure to him, in which he overindulged. I have never known a lawyer who was more loyal to his clients. Contrary to the practice of many lawyers, he did not leave the interest of his client in his office. He carried it with him wherever he went. He always brought to bear upon any case in which he was interested that vast store of legal and general knowledge which his unusual ability and great industry enabled him to command."

Mr. William J. Conners, chairman of the Board of the Great Lakes Transit Corporation, after prefacing that he had known Mr. Mayer as his attorney and as his friend for more than thirty years, wrote as follows: "He did more than any one else to make my Great Lakes Transit Corporation the success that it is and I have much to thank him for. His wonderful advice, help and friendship I had at all times. In fact, it got so I would not attempt to do anything without consulting him, and if I did, I used to get the devil. Levy very skillfully handled our Great Lakes law business and I don't think we ever lost a case or ever received a setback while he served as our vice-president and general counsel. With my newspapers, boats,

docks and numerous other enterprises there was much law business and litigation and Levy handled it all. About thirty years ago, I took over my newspaper properties here in Buffalo and at the start experienced quite a lot of trouble in getting proper recognition from the Associated Press. The Associated Press was located in Chicago at that time and I wired my superintendent of docks at Chicago, John Bowen, to hire the best lawyer in Chicago to handle the matter for me, and that I was to arrive the next morning. Immediately after arriving I was introduced to a young lawyer that Bowen got for me. I was a little disappointed when I first looked at him because of his youth, but after a few minutes' talk I learned that he was a former counsel for the Associated Press. I looked the situation over and figured that that would help a whole lot any way, but I was still disappointed because my instructions to my man Bowen were to get me the best and biggest lawyer in the city and I was commencing to think that I would have to get a much older and more experienced man to handle the business for me. We went to the bat, however, and when I got the situation straightened out and won the day through the hands of Levy, and only after he made a splendid address and appeal in my behalf, I asked him what his retainer was. He answered me, 'Why, that's all right.' From that moment on we became intimate friends and pals. When I come to look it over, the fact of the matter is I never paid him for his first job for me. He was without doubt one of the

most brilliant and successful lawyers this country ever produced. His lucrative law business, and the great fortune that he amassed during the past thirty-five years, prove conclusively his great ability and success. Levy was very human and he had a very keen sense of humor. He had many friends and his friendship was worth having. I prized it very much. He was not the kind that was with you when you were in the heyday of your power. He was with me when I had nothing. When I first met him I did not possess very much of this world's earthly goods, and Levy did not seem to be any too well fixed himself. As I said, he was a young struggling attorney but one couldn't help but be impressed with his fine manly face and personality. Levy is greatly missed by all of us."

Mr. Henry Herget, president of the Pekin Cooperage Company, wrote a letter in which he threw the following admirable light upon Mr. Mayer's character: "In 1915, when our company took over the Cooperage properties of the Distillers Securities Company and long-time contracts were made for supplying them with cooperage, he turned to me and said, 'Henry, who is your lawyer?' I said to him, 'Why, you are,' and he replied, 'But I am representing the other side.' I then told him I knew he would take care of our interests fairly, notwithstanding we had no outside attorney, and I wish to say to you that he protected our interests fairly and honorably and I never had any occasion to regret this rather unusual transaction in the selection of an attorney."

Mr. Marcus Eaton, one of the brilliant younger lawyers of Chicago, whose death, since the date of Mr. Mayer's death, was so much deplored in legal circles, wrote in 1923 of a legal representation in which Mr. Mayer participated with Mr. Joseph H. Defrees, senior member of the well-known law firm of Defrees, Buckingham and Eaton: "My senior partner, Mr. Joseph H. Defrees, is away from the city on vacation. He thought highly of Mr. Mayer, whose contemporary he was, in the practice of the law, over a long period of years. He has told me with appreciation of one occasion where he was representing, without compensation, an intimate friend, himself a member of the Chicago Bar. The matter was one of great importance, and it developed features which no one could handle with such success as could Mr. Mayer. Mr. Defrees found Mr. Mayer engaged in some absorbing professional activities, but he sensed the importance to our colleague of his own service in his behalf. Mr. Mayer's acquaintance with this colleague was not of that intimate character which called for the financial and personal sacrifice which Mr. Defrees was so gladly making in his behalf. Arrangements were accordingly made on the theory, so far as Mr. Defrees was concerned, that Mr. Mayer would charge, and be paid, on the same basis that his service commanded in all matters of like importance. Hours were devoted by Mr. Mayer to the successful consummation of the desired result. When it was finished and the happiness and peace of mind of a worthy colleague of

this Bar were accordingly assured, Mr. Defrees made a special trip to Mr. Mayer's office to express appreciation and to arrange for payment of his well-earned fees. Mr. Mayer asked only a single question: 'Joe, how much are you getting?' Mr. Defrees replied that his relations were such that he could make no charge. Mr. Mayer's face lighted up with one of those generous smiles which we all remember, and he disposed of the question with a friendly gesture, 'I can afford, Joe, to work just as cheaply as you can.' "

Hon. John G. Oglesby, who was Lieutenant-Governor of Illinois at the time Mr. Lowden was Governor, paid this tribute to Mr. Mayer: "It was my privilege to enjoy a close association with Levy Mayer for a number of years. Among all my acquaintances I recall none who left a greater impress upon me. To speak of him as an able counselor and adviser, as a conscientious and devoted public servant, is to repeat what everyone knows. Thousands who did not enjoy a personal acquaintance with him realized and appreciated his virtues and capabilities. What the general public did not know about and did not understand was that geniality and companionship that made him a friend to be sought above all others. His magnetism was irresistible. As an associate on the State Council of Defense during the trying days of the World War, I had an unusual opportunity to note the functioning of his brilliant mind and to understand the high motives of loyalty and patriotism that actuated his every movement. The same high-mindedness was evidenced

in his devoted services as a member of the recent Constitutional Convention, wherein he was recognized as a power with no superior. Not only his intimate friends, but both state and nation suffered an unspeakable loss in his untimely death."

Guy W. Currier, a conspicuous member of the Boston Bar, wrote: "I went to Europe with Mr. Mayer in 1912 or 1913 and saw more of him on this trip perhaps than at any other time. Mr. Mayer was representing the Rosenbaum grain interests in attempting to organize the grain business in Russia and the Near East along the lines used in this country, and asked me to be associated with him in the negotiations. Although much time and effort were expended, Mr. Mayer finally abandoned the idea, largely because of the general unsettled political conditions which were the forerunners of the war. Mr. Mayer displayed throughout his conspicuous talent as a negotiator, and his decision not to carry the matter to a conclusion illustrated that unerring instinct in business matters which he had as a sort of sixth sense."

Mr. William D. Guthrie of the New York Bar gave this character delineation of Mr. Mayer:

"I met the late Mr. Levy Mayer thirty-two years ago in connection with a litigation relating to the Stock Yards, in which I was of counsel for the Stock Yards Company, and he of counsel for what was called the 'Independent Packers.' I was then profoundly impressed with his great ability, energy and resourcefulness. The only other time I met him pro-

fessionally was in connection with the Prohibition cases, argued in March, 1920, in which he represented the Kentucky Distilleries, and Mr. Root and I represented the United States Brewers Association. I was again very much impressed by Mr. Mayer's ability as a lawyer."

Mr. John E. Wilder, president of Wilder & Company of Chicago, wrote as follows: "I count my acquaintance and friendship with Levy Mayer as one of the rich experiences of my life. During many of the years in which he, as legal advisor, and I, as an officer of the Illinois Manufacturer's Association, were brought closely together in the discussion of public matters, it was continually impressed upon me how singularly combined were Mr. Mayer's rare legal ability and an acute business acumen. Many attorneys are good interpreters of the law, but comparatively few bring to their client the practical application of their knowledge from a business standpoint. Mr. Mayer's ability to think straight and to the point, regardless of annoying interruptions, was to me one of his marked characteristics. It was my pleasure to sit in his office one day by appointment, together with the stockholders of a certain company in which I was interested, and which he was putting into corporate existence. During the discussion of what the stockholders wanted, Mr. Mayer commenced to dictate the constitution, and later the by-laws of the company, and during his dictation, innumerable interruptions came to him over the telephone. He never asked his

secretary to repeat, but would take up the subject matter as though there had been no interruption, and when he had finished and the instrument was sent around for criticism or correction, there was nothing to be added or taken away. For nearly twenty years this organization has not found it necessary to amend a by-law. His great experience in corporation matters gave him a wonderfully clear insight into the needs of his clients, and brought the record of his work into simple and direct language, easy of comprehension. During nearly a two-year series of conferences with railroad officials and their attorneys, Mr. Mayer was the sole and only attorney representing the shipper's interests in official classification territory, there being from five to seven attorneys representing the different railroads. Early in these sessions, without ostentation, and speaking only when called upon, it became apparent to all present that he was the best informed attorney on railroad matters in the conference, and all concerned grew to depend upon his statement of the law concerning any point of controversy and accepted it as final. The outcome of this work is the present uniform Bill of Lading."

Mr. Blackburn Esterline, who was assistant to the Solicitor General at Washington as late as November, 1923, and who saw a good deal of Mr. Mayer when he was in Washington on legal business, expressed himself as follows concerning Mr. Mayer as a lawyer and a man: "His cases usually involved not only difficult and important legal questions but large financial

interests as well. The Supreme Court of the United States, the Committees of the United States Senate, and the Bureau of Internal Revenue of the Treasury were the tribunals before which he practiced more than any other. With less frequency he also appeared before the Interstate Commerce Commission and the Federal Trade Commission. Whether in argument at the Bar, in making an address, or in private conversation, his studied views were always positive and direct. He did not equivocate. Thus, in his argument before the Supreme Court of the United States in the *National Prohibition Cases,* he said: 'You are now coming to the fork in the roads. In one direction lies the unlimited power of amendment; in the other, the slogan "Back to the Constitution." ' In an address on the *League of Nations* before the Bond Men's Club, he said: 'I have talked longer than I had intended. I have been uninfluenced by any question of politics; but a due regard for the present and future of the country where we live and where we were born, requires that the United States shall stay out of this League of Nations.' Mr. Mayer was big-hearted and generous, particularly with those in whom he had any kind of interest. Successful as he was, he never displayed wealth or forgot a friend. He was always proud of the success of the young men who were coming along with and after him. I have heard him talk for minutes at a time about the character and ability of some young man whom he had brought to his office and made his partner. He inspired confidence

and assurance always as no partner or associate ever worked harder or longer hours than himself. His large, efficient and effective office organization is the highest evidence of that. Mr. Mayer had many friends in Washington. He was always a welcome visitor and ever ready with a story about himself, or someone or something. He never appeared to be in a hurry. He was very much attached to his friends at the Department of Justice, among whom were Attorney General Daugherty and Solicitor General Beck. We have often marvelled how he apparently had time to spare in the morning with a hearing set and enormous interests at stake in the afternoon, the details of which he always had at his tongue's end or his fingers' end. He easily ranked among the leaders of the Bar. In the National Prohibition Cases there were many able and distinguished lawyers from the first rank of the profession. Strangely and quietly Death visited Mr. Mayer and took him away at the zenith of his fame and power. Often have I wondered what were his last thoughts as he left this world in which he had been unceasingly active. We will never again have or know another like him as he did not belong to any class."

On the day after Mr. Mayer's death the Illinois Manufacturers' Association adopted memorial resolutions in the following words:

"Yesterday, August 14, 1922, Mr. Levy Mayer of Chicago passed away suddenly. Mr. Mayer was one of the best known citizens of Illinois and a national character, both as a man of affairs and as a lawyer.

As an adviser in matters of great business, and as an advocate of great power, deep learning and eminent success, his name was familiar throughout the country. It is not, however, for reasons of such a general character that this meeting of the Board of Directors of the Illinois Manufacturers' Association has been called to take action in reference to Mr. Mayer's death. It is because of ancient ties, going into the very roots and beginnings of the Illinois Manufacturers' Association that it is now desired that its directors take notice of Mr. Mayer's untimely death, and wish to express a recognition of Mr. Mayer's service to the association and to transmit a message of sympathy and condolence to the bereaved family. Mr. Levy Mayer was the first general counsel of the Illinois Manufacturers' Association. He incorporated the association in 1893 and for sixteen years served the organization in the early and trying period of its existence with signal ability and fidelity. He conducted for the association litigation of great public significance, and of importance to the membership. The system of publication of the opinions of the law department began with him. The extraordinary business common sense which was so marked a characteristic, coupled with his wide knowledge of the law, gave the opinions, which were distributed to the members over his signature, a peculiar authority. Mr. Mayer was found always a helpful, wise and trustworthy adviser. It might be difficult to enumerate the many ways in which as general counsel Mr. Mayer did his

part in building up the association to the stature which it has since attained. The Board of Directors of the Illinois Manufacturers' Association is fully appreciative of the debt which the Association owes to Mr. Mayer. In taking this opportunity of acknowledgment, the directors desire to express to his family their deep sense of sympathy in their irreparable loss."

Resolutions of respect and memory were passed by the Board of Directors of the Great Lakes Transit Corporation, for which Mr. Mayer had done so much over a period of years; and by the directors of the Continental and Commercial National Bank. In the latter resolutions these words were used: "A lawyer, in the sense that he practiced and was devoted to that profession, Mr. Mayer was also a business man in the broadest significance of the term. As a firm believer in the doctrine that business success offers to the community the means of attaining and enjoying the finer things of life, he applied his genius for organization and his originality to the promotion of business and the development of it as a public service. His passion for liberty and his devotion to orderly, legal methods of gaining and safeguarding it found frequent manifestation in service given freely for the common good. His splendid services will be held in grateful remembrance not only by his associates in this bank, but by a great number who understood and were indirectly benefited by the scope and reach of his work."

On September 14, 1922, Mr. Walter H. Wilson, Mr. Mayer's fellow delegate from the First District

in the Constitutional Convention, placed a basket of flowers on Mr. Mayer's desk in the Assembly Hall in Springfield and offered memorial resolutions which were unanimously adopted by a rising vote of the convention. The resolutions read: "Once more death has invaded our ranks. This time he stalked in unannounced, more roughly than is usual, and smote our fellow delegate, Levy Mayer. He was still in his prime and of great intellectual power. If his voice had not been silenced, it might yet have been raised in unrivaled eloquence to proclaim the merits of the constitution he had helped to frame for his own state. We deplore his going and here record our sense of loss, our appreciation of his ability, and our sympathy with those who loved him."

The Building Committee of the Chicago Woman's Club passed these resolutions: "Whereas it has pleased God in his inscrutable wisdom to remove from our midst our valued friend and benefactor, Mr. Levy Mayer, in whom the Building Committee of the Chicago Woman's Club has found, since its creation, a wise counselor and unfailing and sympathetic supporter; Whereas the Building Committee, having benefited immeasurably by the wide experience and keen expert judgment of Mr. Mayer, realize in a peculiar way the quality of unostentatious service which was the basis of his personal life; Whereas we hold in grateful memory the kindness and generosity of Mr. Mayer who (although we were not paying clients, but 'honorary clients' as he humorously called

us) gave unstintedly of his time and thought to our problems, thereby rendering our cause a background of stability and influence in the business world of Chicago, which it would otherwise have lacked; Whereas our sense of loss in the untimely passing on of Mr. Mayer is keen and personal, Be it therefore resolved that we, the Building Committee of the Chicago Woman's Club, express again our appreciation no less of Mr. Mayer's professional service than of his personal friendship, that we extend our most tender sympathy to the stricken family, that a copy of these resolutions be sent to Mrs. Mayer, and that they be incorporated in the minutes of this meeting."

The Chicago Daily Law Bulletin, on the date of Mr. Mayer's death, published an article from which the following paragraph is taken: "In the death of Mr. Mayer the Bar of this city, not only has lost one of its most distinguished members, but Chicago loses a citizen who has done much and planned to do more for the city's advancement. Measured by material success, Mr. Mayer won great wealth, paying, in all probability, the largest income tax of any lawyer in the United States. But in a broader, better way, he won the highest rank in his chosen profession."

The press of Chicago and the country was unreserved in its recognition of Mr. Mayer's character and achievements. In its issue of August 19, 1922, the Chicago *Israelite* paid a very admiring tribute to the man: "In many a heart," said this article, "the name of Levy Mayer is written in indelible letters of grati-

tude for his incomparable kindnesses. How trustworthy and upright a friend he was to every one who sought his counsel, and aid, a legion of friends and the hundreds upon hundreds of beneficiaries of his quiet, unostentatious generosities alone know. He was the 'grand almoner' of half a hundred young men seeking educations, and to appeals for aid daily, almost hourly, Levy Mayer gave freely and graciously, genuinely glad to be helpful. His attractive personality, his splendid character and general culture, made him unquestionably one of the most distinguished Jews in Chicago. Mr. Mayer's character is best illustrated by the fact that, despite his voluminous business affairs, he was the most approachable of men, so accessible as to rebuke many a lesser light who makes access to him a veritable labyrinthian process. He could be easily reached by every one, and was not only the personal friend of many a local newspaper reporter, but a willing and invaluable source of reference for all. There have been times when Mr. Mayer suspended a conference involving millions of dollars or got out of bed in the wee hours of the morning to answer the reporter's queries. His one request generally was that he be not quoted. One of the most noted attorneys in the country, with prodigious legal burdens claiming his time, Mr. Mayer found time to be of service to all in need, a man of multiple benefactions, but remaining ever, simple and unaffected—a real man."

Arthur Brisbane, in his column in the *Herald Ex-*

aminer of August 15, wrote: "The sudden death of Levy Mayer takes from the American Bar one of its most powerful figures and from many great industrial and other organizations their ablest adviser. Levy Mayer died a victim of work and of devotion to his clients. He worked ceaselessly night and day. Interests entrusted to him were never out of his mind. He supplied to his important clients not only legal knowledge and fighting ability, but mental courage to face difficulties. He left behind him many earned friendships, earned by usefulness and loyalty."

The Manufacturers' News, in its issue of August 17, contained this appraisal: "Mr. Levy Mayer who passed away on Monday was the greatest industrial lawyer the world has produced. He was also a leading authority on international law and general legal questions, but his principal forte was industrial matters. During his life the United States became the greatest manufacturing nation in the world and the progress in organization and development was largely due to Mr. Mayer's leadership. He created more manufacturing organizations in the United States and was more responsible for their success than any other individual or group. The wonderful success of the Illinois Manufacturers' Association, which he helped to organize in 1893 and for which he acted as general counsel for a decade and a half, was due largely to his foresight, initiative and constant efforts. No man in the United States could have been taken away whose absence would be more keenly felt by the manufacturing industry."

The Economist of Chicago, in its issue of August 19, paid this tribute: "Mr. Mayer was a power in the business world. In the beginning his life was like those of most great men, obscure, poor and underpaid. But he had a mind and he was industrious. In his practice he was not equalled by any lawyer in the country and his industry and successful coups brought him when quite young many clients, mostly successful business men. He spoke and acted in italics. There never was any doubt about what he meant. They say he knew something about constitutional and international law; he did, but he also knew something about the law of bankruptcy and in the days when these afflictions were numerous he was most always found on one side or the other guarding very large interests. He was recognized as among the leading if not the greatest legal tactician of the American bar. He was the most daring man who ever practiced at the Chicago bar and he put forth arguments of which other lawyers never dreamed, much less thought the courts would approve—and he was successful. He talked law as if he had written the statutes. With a righteous vanity concerning his knowledge and the practice of his profession—he never had a case which to others seemed easy —but with all this he was an example of democracy and simplicity, the like of which one rarely, if ever, meets among men so accomplished, prone as are the great to the practice of these virtues. He had no social ambitions. His was the path of duty and the end came when he was pursuing it. Comparatively young and

strong in a way, not yet sixty-four—a martyr to his profession. His death was due to overwork."

In a special article written by one of the staff writers of the *Chicago Daily News,* Mr. Mayer's death was lamented as one of the hardest afflictions of the city. "Although he was among the busiest and most highly paid lawyers in the country," said this writer, "he was accessible even to the humblest person. His office boys would come in and tell their troubles or hopes and he would listen as attentively as if they were the greatest corporation presidents. . . . Every one in his office found in him a friend. When any of his old employees or associates were taken ill it was his rule to make visits to their bedsides, oftentimes accompanied by Mrs. Mayer, and he grieved over their sickness as if they were his own children."

After recounting a number of instances of Mr. Mayer's philanthropic impulses, he wrote of this one: "An old college professor, whom Levy Mayer knew in his school days, was discovered by the lawyer to be in financial straits. The man was proud and would not ask for charity but Mr. Mayer was determined to help him. He engaged the professor to come to the law office and give him instruction. Under the guise of these lessons, the professor was paid sums sufficient to maintain him for a long time. Later he was placed in a home where he is today and will remain as long as he lives, thanks to the funds privately given to the institution by Mr. Mayer."

The National Corporation Reporter of Chicago

had this to say: "The deceased was without doubt one of the foremost constitutional lawyers of the United States. Many of the cases in which he has been leading counsel have attracted public attention, both in America and in foreign countries. He was the general counsel for the Illinois Manufacturers' Association for years. Mr. Mayer in addition to the office maintained by the firm here kept an office at 27 William Street, New York. The law library of the firm at Chicago contains 17,000 volumes. Only recently Mr. Mayer was given credit for saving Chicago from a serious financial panic. It was due to his able engineering, so it is said, that the $50,000,000 merger of the Fort Dearborn National Bank with the Continental and Commercial National Bank took place without more than a flurry in the financial world."

The New York American, in its issue of August 16, had this editorial: "Levy Mayer, who died suddenly in Chicago on Monday, was a great lawyer and a good man. The style was the man. He specialized in corporation law because by instinct and passion he was a defender of property rights. Thus he became an acknowledged authority on corporation law in this country. He was counsel for many large industrial corporations and banks, and was particularly active in attacking all laws aimed at the validity of property rights. However, Levy Mayer was not merely a protagonist of wealth as such, but he was equally zealous in the defense of the property of the poor. He expected and accepted very large fees from his wealthy

clients. But many a poor person profited from his acumen and zeal by securing his invaluable services without money and without price. A self-made man, Levy Mayer was not of the kind that might better have left the larger part of that job to others. Indeed, with his tremendous self-won success, his life, ended all too early, indicates that America still is uniquely the land of Opportunity for the man or woman who is willing to work hard and who keeps an eye on the goal."

The Buffalo Courier, in its issue of August 20, had this to say: "Mr. Mayer's war record was in keeping with his character. He devoted practically all his time to his work as a member of the State Council of Defense, and his individual purchase of Liberty bonds amounted to more than $2,500,000. His legal career was one of the most remarkable in the history of the country. During the last twenty years he had been involved in most of the big litigation of Chicago and much of a national scope. His most recent noted fights had to do with the constitutionality of the Eighteenth Amendment, the rights of national banks to hold stocks in trust companies, and the rights of corporations to own real estate."

The Boston News Bureau, on September 6, said of Mr. Mayer: "His charities were as extensive as they were obscure. Big business misses Levy Mayer more as the days pass, though he left a thoroughly equipped law business in hands of brilliant partners. His legal

acumen was almost a sixth sense and his capacity for work was extraordinary."

In states surrounding Illinois and in the press throughout Illinois, the comment upon Mr. Mayer's death was abundant and eulogistic. An editorial in the Grand Rapids, Michigan, press of August 16, said: "You may hear it said that there are fewer opportunities for ambitious youth to-day than in the time of Franklin. But current obituaries deny the faint-hearted pessimism. In Ireland, England and America striking examples of the rise from humble birth to historic power are seen in the day's news. These men have gone on to join Franklin and Lincoln. But others are stepping into their places."

The Rockford (Illinois) *Gazette* said this: "In the sudden passing of Levy Mayer, of Chicago, the bar of that city, as well as the nation, loses one of its most brilliant minds. He played a most important part in the larger legal affairs of Chicago for many years. His death also adds another name to the decimated ranks of the Illinois Constitutional Convention, in which body he had served with distinction."

The Bloomington (Illinois) *Bulletin* published an editorial to this effect: "Levy Mayer is dead. He was a man of culture, of character, and of charity. He was a credit to Chicago and an ornament to his race. If Lord Northcliffe, penniless as a boy, reached highest rank in England, it is incontestable proof in these days of Bolshevism that the old world not less than the new has its gates open to gifts of energy and grit,

and that the whole world is a land of opportunity to those who carry the credentials of character and industry. Nor is there any unyielding thing anywhere against race or creed. What Disraeli achieved in England, Levy Mayer matched in America."

The Canton (Illinois) *Ledger,* in its issue of August 16, contained this tribute: "Levy Mayer, great Chicago attorney, is dead. He was an ardent solicitor for his clients. He bore an undying name for reliability and clean shooting. The interests of others, entrusted to him, became his interests—to protect and guard over."

Mrs. Mayer and her daughters having arrived in Chicago, the funeral of Mr. Mayer was held at Sinai Temple on the twenty-fourth of August, 1922. A great audience filled the huge tabernacle, composed of great railroad capitalists, judges and bankers, with whom mingled less conspicuous citizens who had known Levy Mayer in some of the many contacts of his professional and social life. The honorary pallbearers numbered the most distinguished citizens of Chicago, among whom were such men as Senator Medill McCormick, Arthur Brisbane, J. Ogden Armour, George M. Reynolds, Oscar G. Foreman, Julius Rosenwald, Samuel Insull, Ex-Governor Lowden, Benjamin H. Marshall, George E. Brennan and Victor Lawson. Others, not residents of Chicago, were Blackburn Esterline, Abraham L. Erlanger, Morris J. Hirsch, Sam Lederer and William Marshall Bullitt.

The Bar Association was represented by a committee headed by Silas H. Strawn, among whom were George A. Cook, former Justice of the Supreme Court of Illinois, W. W. Gurley, general counsel of the surface railroads of Chicago, Roy D. Keehn, counsel of the Hearst newspapers in Chicago, Harrison B. Riley, president of the Chicago Title and Trust Company, James M. Sheehan, Henry Veeder, counsel of Swift & Company, and others.

The Illinois State Bar Association was represented by Federal Judge Alschuler, Judge Holdom, Judge Cutting, Judge Pam, Ex-Governor Charles S. Deneen, former Judge Nathaniel C. Sears and others.

The officiating minister was Dr. R. A. White, who had known Mr. Mayer for more than twenty years and had had intimate association with him. Because of the fact that he knew Mr. Mayer so well, his words uttered at the bier have a peculiar significance. "I personally like to think of death as a journey," Dr. White said, "—not as the end of something, but as going somewhere—the one last and great adventure of life. It is wonderful to travel about the world, but I have a feeling that this last journey, when we sail out, as we all some time shall, o'er this great unknown sea toward this unseen shore, will be the most interesting of all. There are times when we grow a little curious about it, and wonder over what seas we shall sail; under what strange constellations we shall travel, and upon what wonderful and marvelous shore we shall some time land. I like to think to-day that our

friend, Mr. Mayer, is not dead in the old traditional sense; that he is simply setting out upon a very wonderful journey; that he is undertaking the last great adventure of his very interesting life, and we, his friends, and admirers, have come here to bid him good-bye. It is as those who go down to the shore to see their friends as they depart in ships, and send them a signal of love and affection as they sail out into the mystery of the night, the strangeness of the sea. . . . It is pleasant to recall that Mr. Mayer set out on this last great adventure as he himself would have chosen. There were no days of lingering pain, no long hours of agony, no grim fight with a known and fatal disease. He worked on to the last, spent his last day with friends in laughter and happiness. Then fell asleep. Upon his face was a look of peace. Physically, death is a sleep. A sleep through the experience men call death to an awakening in some eternal morning. Spiritually, death is a journey. Physically, death is rest and peace. . . . Our friend Mr. Mayer was weary and tired with work. He was scarcely himself conscious of the weariness. In his love of his profession, in his devotion to his work he forgot that he might be tired. Mr. Mayer believed in the gospel of work, he never spared himself. In the nature of things it was time to rest. The night came all too early, it seems to his friends."

Then Dr. White turned to pay Mr. Mayer a personal tribute, based on his knowledge of the man. "It was chiefly as a business man," he said, "and lawyer

that Chicago knew Levy Mayer. His friends knew a deeper Levy Mayer, Levy Mayer, the man and friend. I first came to know Mr. Mayer over twenty years ago, down by the sea, near old Plymouth Town. Here I found the lawyer and the business man unmasked. Here by the sea, as far as possible, he flung off his cares and his legal duties as a garment. The soul of the man stood naked and revealed. Here in his fine vacation home the elemental things in his nature stood boldly out. Here I found him off guard. I forgot the big business man and the great lawyer, and learned to love and admire him simply as a man. I found him a lover of nature and its varied beauty. He loved the sea. Its bigness appealed to the elemental largeness of his own nature. It was like deep calling unto deep. He loved the long reach of shore where the sea sang in the sunshine, or flung great lines of foam-crested breakers over the rocks and sands of Cape Cod. The blush of beauty on the ripening cranberries, the long stretch of woodland, the flight of bird on even wing, the beauty of flowers, the skies aflame with sunshine or somber with gathering storm clouds appealed to and also revealed the deeper man. I like to recall him as I knew him there by the sea; his sleeves rolled up, his collar flung back, a tennis racket in his hand, or at one of the famous private clam bakes on the shore. To be a guest at his home table, where a few friends gathered, where wit and humor and good-fellowship prevailed, was an event. He was a man of broad culture. He loved books. If he allowed himself, as all

should at times, excursions into the realms of lighter literature, his choice was books with thought in them. I owe the knowledge of many a good book to Levy Mayer. His sympathies were deep and broad for all human rights. By circumstances he belonged with the great vested interests of the nation. In his heart he had a genuine sympathy for the men and women who toil with their hands, and an interest in every honest endeavor of honest labor to better its conditions. He began at the bottom himself and carried into his success the remembrance of struggle. Had Levy Mayer been a large employer of labor I venture to say none would have questioned his earnest desire to play the game fairly, and to give the square deal to the men and women who toil. I also admired Mr. Mayer for his intense Americanism. Americanism has been badly and narrowly defined. Americanism is not a matter of race, tongue or birthplace. Americanism is a spirit. Those who have the spirit of America in their souls and believe in its ideals are Americans of a high order. Mr. Mayer believed in his country and its institutions. He served it in such ways as his busy life admitted. Especially during the war, he served tirelessly on the State Council of Defense and sacrificed his business interests to do what he could for the nation in its days of storm and stress. I am always impressed when I enter the offices of the great legal firm which he founded, by the various pictures of great Americans, and of great American events, which adorn their walls. He was at the time of his death a member of the Illinois Constitu-

tional Convention. I never entered his office in Chicago that I did not find him busy. But I never found him too busy for a cordial greeting and the invariable inquiries for the members of my family, and usually time for a brief chat. Other big business men might shut themselves away from all possible intrusions except to the favored few, but Levy Mayer's door was open. He was a human man interested in human needs and difficulties. He founded a remarkable legal organization and gathered around him remarkable men. He was the guiding spirit of this. From office boy up to the top, the members of this firm admired him; more than that—they loved him. He was the friend of all. This magnificent mass of flowers marked 'To Our Chief' testifies in some small measure to the affection he inspired among those who were coöperating with him in this great legal organization. Other friends in the columns of the press have borne witness to his many heretofore unrevealed kindnesses and charities. Many are those who have known his quiet help and to-day bless his kindness. Many young men owe their education and start in life to Levy Mayer. He loved fine things, good literature, music and things of beauty. But his deepest affection was for his family. Here was his Holy of Holies. To him his family 'was a lily with a heart of fire, the fairest flower in all the land.' "

Federal Judge Samuel Alschuler pronounced an eulogy over Mr. Mayer which concluded the funeral services. "If I were accustomed to speak," he said,

"on such occasions, and to sermonize upon and draw lessons from the lives and careers of departed friends, I believe that as illustrating the dominating and controlling characteristics of this very unusual man, I could not do better than to call to mind the verse from Ecclesiastes: 'Whatsoever thy hand findeth to do, do it with thy might, for there is no work nor device nor knowledge nor wisdom, in the grave, whither thou goest.' Unremitting toil and unswerving devotion to duty were the mainspring of this man's great career. We speak of great genius, or of great natural gifts, but by far the better and greater part of all genius is capacity for close application and hard work; and in this the deceased was extraordinarily endowed. These qualities he manifested when as a poor boy he toiled as an assistant in the Chicago Law Institute."

* * * * *

Though I saw Mr. Mayer frequently during the more than twenty years that I practiced law in Chicago, I had but three intimate contacts with him. Long before I had ever seen him, however, I had heard accounts from lawyers and judges concerning his brilliant feats of advocacy. He was then spoken of as Young Levy Mayer, and as the coming head of the profession in Chicago. I knew at first hand of the part he played in the teamsters' strike; and the glucose litigation and the Iroquois prosecutions and proceedings were matters of interested discussion in legal circles. I was one of the attorneys of certain relations

of those who perished in the Iroquois fire, and who were seeking to obtain compensation for loss of lives; and in these cases letters rogatory had been issued in New York City appointing a Chicago commissioner to take the testimony of persons residing in Chicago. The commissioner appointed was a man who had paid the price of being involved in a prosecution in Chicago; but he was really a vicarious sacrifice for the benefit of prominent citizens who had plotted the offense and appointed this man and others to carry it out. Being caught in the act, he was tried with others, and they were all convicted. This man paid his fine, and for years after received a monthly honorarium for shouldering the responsibility, and protecting those who were equally at fault. Mr. Mayer was on the opposite side from me in the damage suits in question, representing Klaw and Erlanger and others; and if any one had the right to object to this man acting as commissioner in the taking of this testimony, it was Mr. Mayer. The point was that the letters rogatory had to be confirmed by an order of a court of record in Chicago, and to get this order I appeared one morning before one of the judges of the Circuit Court. Mr. Mayer came to court in representation of his side of the case. The judge, when told the name of the man who had been selected as commissioner in the letters rogatory, inquired if it was the man who had been convicted and fined in the prosecutions mentioned. Mr. Mayer and myself simultaneously told the court that such was the fact. The judge, swollen

suddenly with virtuous objection and having regard perhaps, to newspaper approval, stated that he would not make the appointment. Mr. Mayer then addressed the Court for ten minutes with great spirit and eloquence. He pointed out that if there was anything wrong with the character of the commissioner named in the letters, his clients and himself as their attorney were the likely ones to suffer. But he did not believe that the commissioner would depart a hair's breadth from the strict course of duty; or, indeed, that he could; and that it was neither just nor humane to debar him from serving, on the ground of an old offense for which he had paid the price, and by doing so to resurrect a blot in process of being forgotten and again to fasten it upon him, considering, too, that it was well known that he was not the real party in fault. Mr. Mayer resented the attitude of the judge as forcefully as he could; but without altering the judge's mind. The commissioner was rejected and another was appointed.

"Some years later than this I was opposed to Mr. Mayer and others, first in fact to Judge Moran and others, in litigation against the Associated Press, in which, as attorney for the Hearst papers in Chicago, I was endeavoring to get the press franchise for them. One of the lawyers for the Associated Press talked for three weeks. It was all argumentation of technical law and procedure. Judge Moran talked two hours and put more life and interest into the case than it had up to that time. It was when Judge Moran died that

Mr. Mayer came into the case; and for the first time I had the opportunity to see his skill and learning in operation. Associated with me was Mr. Charles R. Holden who had grown up in the Mayer office, but for some years before this time had been in partnership with Mr. Kraus and Judge Alschuler. Mr. Holden was at that time in the late thirties, but he had acquired incredible legal learning, and his industry knew no bounds. I observed that Mr. Mayer knew every authority, book and page that we quoted in that argument; and by swift interjection was often able to make a point against its applicability. He seemed to carry the world's law books in memory. His address to the court was energetic, swift, pointed, condensed and confident. There was no victory, however, for either side in this litigation. It deliquesced through delay and technicalities; and finally the Hearst interests, by acquiring the *Chicago Herald,* got the press franchise, and litigation to get it became unnecessary.

The only other time that I came into contact with Mr. Mayer was shortly before his death, perhaps only a month. I had been in consultation with members of his firm in regard to pressing interests of my own. One evening when I went to the office to see Mr. Abraham Meyer, the member of the firm who was generously giving me his time and counsel, he told me that Mr. Mayer wished to see me. I was very much surprised as I had never been in Mr. Mayer's private office or in any way sought to enlist his individual services. Mr. Meyer went on to tell me that

the night before he had discussed certain features of my interests with Mr. Mayer and that Mr. Mayer immediately took a very enthusiastic stand in my behalf. After a few minutes we went to Mr. Mayer's office and for the first time I saw the private library and the exceptional distinction of the furnishings and equipment with which his daily professional life was surrounded. He greeted me with marked cordiality and evident interest in my behalf and, after saying that he had been told of a particular peril with which my affairs were threatened, he vigorously announced that the anticipated injury would never come to pass, and that he would himself see to it that it did not befall me. He then proceeded to tell me how he could prevent it, and I saw that he could do so. I was very much impressed with his generosity, particularly so, as we never had had any association or relation with each other except as I have already told; and there was no reason for his taking this stand for me, except that it was in his nature to do such things. In point of fact, I was not able financially to engage his individual services and when he saw that I was reflecting upon the matter of a fee, as he was offering to befriend me, he anticipated my own expression on the subject and stated that he would never take anything from me, nor expect it, neither did he want it. I left his office much impressed with the generosity of his nature, and feeling that not before had I known his real quality.

CHAPTER XI

DOMESTIC LIFE—LETTERS TO MEMBERS OF HIS FAMILY

MR. MAYER had a very deep affection for his father and mother, his brothers and his sisters; and when he had wife and children, they were taken within the circle of his devotion. The man is portrayed by the fact that he had close to his heart the interests of his brothers and sisters, and that they equally had him in their thoughts and daily life. Already in the beginning of this book the story is told of the assistance which David Mayer gave to the younger brother, Levy, at the time that the latter was being educated at Yale College. All along through the years, from youth up, the Mayer sons found their greatest happiness in life in watching the progressing careers of one another and in doing what they could to forward them. Mr. Mayer's home, his wife and children played an equal part in his life with his devotion to the law business and to the public enterprises into which the law business led him. In spite of his many preoccupations, he had time to write letters to his brothers, sisters and, especially, to his wife and, later, to his daughters, Hortense and Madeleine. When grandchildren entered his life, the wellsprings of his affection were touched in an especially tender way. Enough has been shown of him to prove that his profoundest satisfactions were intertwined with the

family and the fireside; and his correspondence betrays the regret he felt that great business interests kept him so much in his office and in travel over the country and in Europe and away from home. The course of his life gave him hours all too few with Mrs. Mayer and his beloved daughters. When he was traveling on business and on rare occasions when he was resting or diverting himself, he sent many letters to the objects of his affection. During the time that he was in Yale he wrote frequently to his father and mother and to his brothers David and Jacob—at that time Isaac was a young boy, but even he exchanged letters with him.

In 1879, while still in the Law Institute, he had journeyed to Minnetonka, Minnesota, evidently on a vacation as, in a letter written to Mr. and Mrs. David Lepman, the latter of whom was his sister, he speaks of the social diversions with which he was surrounded. In this letter he laments his inability to play—something that he recognized as a deficiency in himself to the last. In writing about the dances that were being held at the Hotel St. Louis, he said: "Every time occasion offers I feel deficient in one of society's most necessary qualifications, regret it and determine to learn to dance; but, when the occasion is no more, my desire has kept it company, leaving me very much in a condition like Hudibras' devil, who

> 'was ill and a monk would be,
> 'but got well and a devil was he.' "

After speaking of Minneapolis as a city of 50,000 inhabitants and of the flour and milling interests there, he continued: "The falls of St. Anthony are caused by a bend and fall of the Mississippi River; and the fall, though not high, is of tremendous volume and force. I have also visited the falls of Minnehaha, rendered famous in the 'laughin' words of Longfellow. . . . I am very anxious to hear from you. Should you write, you may direct your letters here at this place for I shall remain some four or five days longer. With a kiss for your dear children and hoping you all are well, I am,

Your brother."

At the time he became acquainted with Miss Rachel Meyer, who afterwards became his wife, he was beginning to be deeply engrossed in the practice of law and with a fast-growing clientele demanding his attention. One of the delights of their early association was horseback riding and among his correspondence are a number of notes arranging for the horses and the time for starting forth. A letter of October 24, 1883, written to Miss Meyer, gives a picture of his legal life as it was at that time: "I am writing," he wrote, "from the office at 10.30 p.m. I have been in the midst of a trial which enters upon its fourth day to-morrow (and I might add its fourth night). Tired —fatigued—with a mind hardly buoyant enough to think of you, and a heart barely grateful enough to thank you for your kind gift and your still much dearer note, I yet feel it a duty (in whose performance

my pleasure seems to diminish inversely as the effort ceases) to jot down just a little for you. If this sentence is rather long and involved, let me suggest that it is a sort of reflex action, for I have just finished and arranged some twenty (probably misleading and confusing) jury instructions. I experienced yesterday what I think I have before expressed to you—that the very kindness of my friends produces a tinge of sadness, in this, a kind of feeling of unworthiness. What causes that feeling I don't know, but, unusual perhaps as it is, there is yet a kind of soft poetry in its train, a sun peeping through clouds. . . . Yesterday seemed to usher in a New Year promisingly. Besides your note, keenly sincere, flushed and radiant with blessings and well wishings, some tokens of friendship—a decision of the Appellate Court in our favor. By the way, this is the night of the West Side Ball, and here I am dancing to the music of the pen. I am invited to-morrow evening to dine at the home of Mr. H. W., a son of the ex-minister to France. He is but very recently married and doubtless takes pride in presenting at the same time wife and dinner—surely a happy combination of 'bon vivant.' "

In another letter to Miss Meyer, written sometime before their marriage, he gives an insight into his inner life and allows his lighter mood to play with words and with fancy thus: "Hot—dull—lonesome—such a trinity! Work anything of interest, much less humor, out of those surroundings. There's a task. You have heard of the dual capacity of the Frenchman

who, combining the offices of both Duke and Bishop, always excused his extreme profanity by laying it to the Duke. So, if you'll permit the analogy (perhaps not just apropos), whatever breaks in upon my 'trinity' is fanned not by myself, but, my good friend, by such as your letter. Your kind words smack of the very 'buttercups and clover bloom' in which you are revelling. Well might one envy you. But then you paint such enchanting pictures of your country life—playing bo-peep with nature—chasing along the hills and valleys the shadows of the western sun as he falls to sleep behind his majestic but mysterious curtain, yet quietly gliding over the silver surface of the lake, lacking (perhaps) only the sweet songs of some strolling troubadour, yet —. But here you see how contagious is your sentiment, that one is almost willing to exchange the real for the pleasures of your descriptions. But tell me, did you do penance at that famous cathedral, or were you as the Irishman who, when asked his politics, naïvely replied that he was always on 'the side agin the government.' "

In a letter to Miss Meyer of March 27, 1884, he again throws light upon his daily life: "A day's labor just over and yet the day's work has just begun. Instead of devoting this evening to you, I am going to do what will surprise you—a client (a good one) is running for alderman in the 'bloody eighth' ward, and has enlisted my lungs on the stump to-night. So I am going to address my 'fellow citizens' on the great and pending issues of the campaign. Our friend B.

goes along both as a body guard and a hired claquer, and, what is more, he is preparing the speech while I am writing this note. You will see me, my dear girl, to-morrow evening. Until then, consider yourself with me in mind."

In December, 1884, Mr. Mayer and Miss Meyer were married and from that time until the date of his death, on occasions when he was absent from her, his letters were constant and devoted. In August of 1886 he was in the Yellowstone Park and one of his letters during this absence especially deserves quotation. "It is now nearly 9 p.m.," he wrote, "and I am writing this by oil light and without my glasses, which happened to be in my satchel which is a short distance off in camp. I borrowed this paper in a rude pioneer hotel. I write standing up, there being absolutely no conveniences here. I am so homesick after you and it requires all my courage to bear up until the time comes when I can put you in my arms again. I have seen all together too many wonders on the trip to even begin to describe any of them and in not doing so I shall have the additional pleasure of relating them vis-a-vis. Since we left Livingston it has been, with one or two exceptions, all camp life. To-morrow morning we start homeward. Our plan is to reach Livingston, if possible, Thursday, that being the nearest railroad station and from there I will make lightning speed for home where I hope to be not later than Monday morning, and sooner if it be possible. Until we reach the railroad our trip will be entirely

by means of buckboard wagon or on horseback. We have had plenty of exercise and means of restoring exhausted energies, but without you I must confess the entire 'bouquet of the wine' has been gone. . . . You have been always in my thoughts and in my heart. My usual poor writing is made worse by the circumstances under which this letter is written."

In August, 1888, he was near Miles City, Montana. Writing to Mrs. Mayer, he said: "The different postals I have already sent you have doubtless furnished a brief outline sketch of the places my trip has thus far taken me to. Leaving Forsyth early last Friday morning, we journeyed by wagons to my ranch on Emmels Creek, traveling this way some thirty to forty miles over a very hilly, barren and most uninviting country. We were, however, well supplied with beer and I assure you that considerable of it quickly disappeared. At my ranch I found a new shack (log cabin) containing three rooms just about built—between each set of logs, however, there was a crevice almost large enough to insert one's hand in. These crevices, however, will shortly be filled with sand and lime so as to make the little home water- and snow-proof. The shack was in charge of a man cook and six or seven cowboys who just now had turned partly farmers in raising an excellent crop of oats, timothy, alfalfa, etc., on my land. I think by the time fall approaches I shall have nearly 400 tons on the farm of good hay, etc. Of this crop, some 100 tons are the harvest of last year. All this was done by irrigating—

a creek runs through the land (320 acres). This creek was dammed and by means of artificial ditches, main and lateral, a very barren and non-productive land has been turned into a veritable oasis; for all the surrounding country is as bad as any land originally was —in fact this district has received the by-no-means euphonious, but true, title of 'Bad Lands.' I entered my tract some three years since under what is known as the Desert Land Act, a prerequisite of which entry is that the land must be *desert* and incapable of producing a crop without the aid of irrigation, the purpose of this law being as you will readily see the reclaiming of this vast unproductive and no-good area. I say 'no-good' but this needs some modification, in this—it is very fine grazing land, said to be the most nutritious for cattle in all this western country. To-morrow I make my final application for a patent. At this hearing two additional witnesses will be examined for the purpose of properly establishing the fact that the law has been complied with. We remained at the ranch until Sunday morning when, after a night's sleep on the floor of the cabin and an unusually early Sunday morning breakfast, we left on the buckboard wagon and traveled over the country some forty miles to Howard. The country was considerably more picturesque, but the scorching rays of the sun browned me so that I looked like an Indian. On the way we stopped at several of the Columbia's branch ranches. Howard contains *two* huts, one a railroad section house and the other a post office, the

postmaster of which becomes a father almost as frequently as letters come to his station. He is an Englishman, has six children, and has been married just seven years. The children are strong, white-haired and fat almost as pigs. To one of them I gave a quarter on condition that he tell me his age, but he couldn't do it and, on turning to the mother to give me that information, she apologized and said that she had become mother so regularly and frequently that she could not give the boy's age without turning to the family Bible, 'There,' she naïvely said, 'their ages and names be writ.' "

There are not many letters remaining in his correspondence after the time of his marriage, due to the fact that Mrs. Mayer, as far as possible and up to the time of the birth of their daughters, Hortense and Madeleine, accompanied him on many of his trips about the country. Although they were undertaken hurriedly and on matters of pressing legal business, she was with him for the most part until her increasing cares as a mother rendered it inconvenient. In 1895 they went to Europe, leaving the two daughters in the care of relatives and governesses in Chicago. Along the way it will be seen how constantly Mr. Mayer's mind reverted to his children and, later, to his grandson Larry, whenever he was in a place of interest or beauty during this absence. From the Grand Hotel in Glasgow, Scotland, he wrote to his daughter Hortense as follows: "Dada has just been shaved and on coming into the drawing room finds

dear Mamma has written a real long letter which contains doubtless all details about our Scotch trip now about coming to a close, for to-night we go back to London, which place we left last Thursday. As we shall be in London to-morrow (Thursday) morning, you will observe that we have spent just a week in the land of Burns and Scott. And well spent it has been, too. Love, I have been at more places, slept in more beds, and changed trains and coaches oftener in that time than I have ever done during my prior trip. It has all, however, had its reward. The roads (coach as well as rail) have been in excellent condition. Our way has been up hill and down dale, through trossacks (mountain defiles), across and along mountain streams, upon lochs (lakes), firths (sea arms) and rivers, including the Clyde. The latter furnishes a harbor for Glasgow where we arrived per steamer last night through a dense Scotch fog—mist. This place is the greatest ship-building and shipping port in the world. For miles and miles along both sides of the Clyde one sees lines upon lines of ships in every stage of construction. Yesterday from early morn until evening was one continuous water trip, including the passage on a small steamer for nine miles through the famous Coman Canal which has thirteen locks and by means of which the boat was gradually raised some one hundred and twenty feet. But here I find myself describing the trip, and this I know Mamma has done to perfection. I can't forbear, however, mentioning that from Saturday afternoon until Monday noon

following, we stayed at one of the most delightful spots I ever saw. It was at Inversnaid (pretty name, isn't it?) on the banks of Loch Lomond, made world famous by Sir Walter Scott in his 'Lady of the Lake,' 'Rob Roy' and other works. Under the very eaves of the clean and most inviting Inversnaid Hotel, jumps the Arknet River and through a series of most romantic falls ends its identity in the loch. There is nothing in the place of man's construction but the hotel—the rest has all been made by nature, and most beautiful she has truly been. This little spot is hemmed in on all sides by lake and mountains covered with birch, pines and oak so closely interwoven and intertwined with copse wood that the mountain elk and deer, which are there in great abundance, find it, so it would almost seem, difficult in gaining passage, and yet there are some delightful walks and endless mountain passes to charm the climber and pedestrian as well as tire him. As a charming 'rest cure,' with good food and attendants, the place would readily attract and detain me. Barring yesterday (during a great part of which we had mist and rain), the weather during our sojourn in the Highlands has been most favorable. On our arrival here we found that a great reception was being tendered the Duke of Cambridge and, in consequence, the hotels were crowded and we were turned away. A search, however, brought us to this very quiet, refined and aristocratic hostelry, probably unknown to the usual Yankee visitor. There was just one 'wee bit' of a room left, and we took it—grabbed it! The

service and table, however, made up for it. The food, however, at most of the Scotch hotels is neither varied nor appetizing and, in fact, at times not palatable to one who has just left the Savoy. This is not like Switzerland, a country of inns and inn-keepers; neither has it glaciers nor snow-capped mountains; neither is it grand nor appalling, but it is wild, interesting, surprising and full of romance, and, I think, with much greater variety of scenery which constantly shifts at almost every turn. Besides all this, it has had a Scott who has breathed imagination into fact and turned data, localities, real personages and true history into ideal poetry. In one of my last letters I wrote that Doug had concluded to return with us, and such was his real intention, but man proposes and, they say, God disposes. Last Monday evening when we arrived at Oban, the porter of the 'King's Arms' handed me a message saying that Doug had met with an accident, but giving no particulars. The horse that threw him is, I presume, the same one I wrote you about some days since. He is a beautiful beast and, coming as he does from Dublin, will not be tamed by England. This letter, of course, to be read by you to dear Rosa and all other family members to whom, including grandmas, you may give my love. I send you and sweet Madeleine many, many hugs and kisses."

It was in 1900 that Mr. Mayer purchased the large farm which he called "Indian Hill," the post office being Plymouth, Massachusetts, but near the town of

Manomet. It derived its name because of the fact that on the spot the first battle between the Pilgrims and the Manomet Indians was fought shortly after the Pilgrims landed in 1620 on Plymouth Rock, which is only six miles from the farm. It consisted of over two thousand acres of ground and possessed all the characteristics of a great country estate. On the crest of the hill stood the Mayer mansion house and near by were two guest houses; still farther on were the caretaker's house, electric plant, the water plant, the homes of the servants and the greenhouses. At each end of the estate was a famous cranberry bog, which soon after Mr. Mayer's purchase of the farm attained a reputation throughout the country because of the fact that Mr. Mayer was accustomed on Thanksgiving Day to send a crate of cranberries to his numerous friends east and west. The farm had a vineyard and was improved with rose arbors and nearly every variety of flowering shrubs. He had also stocked with trout Indian Brook, a creek which ran at the foot of the main house through the estate. There were two miles of water front on Cape Cod Bay which gave Mr. Mayer all of the advantages of a picturesque outlook, in addition to supplying the household with fresh lobsters, clams and sea fish in great abundance. Mrs. Mayer was greatly attached to Indian Hill Farm and spent a great deal of her time in working among her flowers and in the gardens. A great many people were entertained at this wonderful summer place during the season, particularly after the daughters, Hortense

and Madeleine, approached young womanhood. The regrettable memory of Indian Hill Farm is Mr. Mayer's inability to spend much time there. He made hurried trips and brief visits to the estate during the summer season, but he was so much preoccupied by business in Chicago and elsewhere, and so much bombarded with telegrams and letters to return that he failed to get the full benefit from this place of delight which his industry and genius as a young man had brought to him. As at the beginning, he was striving all through his life to indulge the play instinct and to enjoy thoroughly the rich advantages of his well-earned prosperity. He could not wholly shut from his mind the business cares and responsibilities of his office; and even in Massachusetts he could not leave them behind him in the law office in Chicago. There were many summers when he was laboring like a Titan in Chicago, while Mrs. Mayer and his daughters were enjoying the beauty and rest of the Massachusetts farm which he shared only on hurried visits and in brief days. In June, 1901, he wrote as follows to Mrs. Mayer: "I want these lines to carry my initiatory heart's greetings to the sweet and good ones as they cross the threshold of the spot that has given us so much comfort and so much to be thankful for. As you wired that you would be leaving Brookline on this Thursday, this letter is sent to 'our' post office box at Plymouth. I have intense yearnings to see May Bluff and there throw all cares and burdens away among my sparkling, happy and dear flock. I shall not ask

questions about any of the favorite spots and old attaches. I shall leave Captain Swift as well as the beauties of our bluff until I come to look them all over myself. And how I long for the chance! In negligee and loose trappings, to feel again a child of nature. I had an urgent message from New York to-day from one who sees serious litigations ahead of him. . . ."

Here is another letter written to the daughters: "I have just finished my Sunday breakfast. It was a lonesome one. No companion, no sweet surroundings, nothing to take the mind from introspection and blueish thoughts except the bah-bah of the bleating lamb that comes in through the open window. Not even Junior and Herbert gave me the usual passing thought, and came in to say 'How d' do Uncle Lefy,' only to run out again. I did, however, hear their playful, though noisy voices, as they gamboled in frolic around the yard early this morning, yes, too early to please me; it was barely about seven and rather too soon for my rest on this day of all when laziness plays havoc with rules and time. . . . Yesterday afternoon was Derby Day. The whole office force, firm and clerks, were tempted, except Frank and stenographers and myself, I gladly availed myself of the occasion to advance some work so as to have the house ship-like, the easier therefore for me to leave, as I intend to do on this Wednesday. . . ."

There is a tone of pathos in the following letter, as it shows the tremendous tension under which he was

living. It is to Mrs. Mayer on one of the occasions when he was in New York.

"I have had a perfect bombardment of telegrams from Chicago to-day, requiring my presence there. I no sooner leave—and the fusillade begins. . . . And yet all this work is not too wearing because it is really what I have aspired to. And very soon I hope its results will be such as to enable me to more comfortably distribute my time. First, the young professional man uses every effort and nerve to build up and accumulate a clientele and then, when the showers turn into storms, he forgets the force expended and tries to lighten or get rid of what he has so earnestly striven for. And thus it goes in every walk and line. But I *will* follow your advice and gradually ease up. Just watch me. . . ."

The following letter written to Mrs. Mayer shows how he kept in mind her happiness and interests and the future of their daughters in the midst of his great professional duties. "Again on the train, en route, shall I say, towards home? Hardly, for my home is where you loved ones are. If we consult our hearts and personal contentment, our own sense of happiness and comfort, of course we would keep our tender, good Hortense at a school where we are, but, if we look ahead and consider the mental and physical shaping of her—the putting her into that condition which shall be permanently best, the fitting her for a well-rounded and equipped life, to enjoy its sweets and blessings and to bear its burdens and duties—I

think it preferable that she should continue at school in Boston where she has already made friends, and where the refined and intellectual influences have already sown seeds in her precious heart and head. If we conclude to fix upon Boston, I think it advisable that you should spend a few weeks there at the start as a sort of homesickness preventative. Such are my views as they run through the mind at this time."

On one of the occasions when he was returning from New York in the professional missions that engrossed his time, the day being Valentine's Day, 1901, he wrote Mrs. Mayer and his daughters as follows: "My dear angels: I might well begin as did the boy who wrote some 'twenty' years ago in your album, 'My hand shakes like a little dog's tail,' were it not that it is the train that does the 'old man's shake.' It is now just 11 a.m., and we are only one hour out from Toledo. We were due there at 6 a.m. Little of the day will be left for me for work when I get to Chicago. This trip has been an eyrie of homesickness for me. It is a long time since I so keenly felt the void made by the absence of my sweet and dear and entertaining pets. The three of you have the coign of vantage over Lee who feels and hopes that soon there may be found a common stamping ground and hearthstone for us all. Let us put our minds to thinking where this shall be, without creating an interregnum in my life's work. The comfort of my own thoughts and self falls far short of what this sort of bachelor husband craves and needs. I have been doing some light magazine reading,

that whiles away the time, but does no more—leaves no more impression than does the fleeting cloud upon the eye. Let this be my heart's Valentine and carry to you all my blessings, my thoughts and my love."

In May of the same year, on the occasion of another absence of Mrs. Mayer, he wrote her as follows: "I have been as usual devoting a holiday to catching up with my work. Isaac and I are the only members of the firm now in the office. It is nearly 6 p.m., and when I finish these lines, I shall meander off, possibly to the club for a shave and a supper. Last evening, as I intimated, I became Florence's guest and remained at 1209 until nearly 10 p.m. The madame has taken a sudden interest in Browning and insisted upon my reading aloud a few paragraphs from 'Pippa Passes.' I was too tired to do much in the dramatic line. This morning Dave and I had, I was going to say, our regular walk, but I recalled that the shop was closed on account of Decoration Day and I walked the line alone. I think, from what little I can gather, that mama [referring to Mrs. Mayer's mother] and Edwin [referring to Edwin Meyer, his brother-in-law] with her will be going east about Thursday of next week. I am still in the dark about my own movements, but a day or two will probably determine. You will be interested in the enclosed clippings. That of the American is rather amusing. Governor Altgeld and myself occupy quite the antipodes, don't we? What a regular communist the old fellow is in his hasty, unfair and unfounded comments on the Supreme

Court judges. I think my comment was dignified, equitable and correct. These recent Porto Rico decisions have been great food for both lawyer and layman. I presume the technical character of the matter has not overshadowed your intention. If you wish to read some 'ana,' personal to your boy, turn to an article in the June number of *Munsey* by William O. Inglis on the 'Rewards of the Law.' See what he says about me on page 428. John Moran called my attention to this at New York. Hugs, blessings and kisses for you, my Love, and for our pets."

Another letter to Mrs. Mayer in October of 1902, written from the Holland House in New York City, expresses tender gratitude to her for her thoughtfulness in sending his glasses which he had missed very soon after boarding the train. The letter then comments upon the recent death of friends in Chicago, after which he wrote: "How fast they are going, and so young, too. Each one of these deaths teaches a sort of lesson, but how soon we forget it and push and speed right along as though nothing had happened, and well it is that it is so. Life is worth living and the lighter we make its burdens the sweeter and happier it is, not only the burdens of ourselves but of those who are near and dear to us. Mr. Vanderlip and I walked from his office at 5 p.m. to-day to the Holland House, a good hour's walk, as his place is in Wall Street. He is the same interesting fellow, somewhat stouter than when you last saw him, and full of weighty financial matters. He could not stay to dinner

on account of a prior engagement." This letter closes with tender messages to Mrs. Mayer and to the daughters.

There is a revelation of his arduous life in a letter written to Mrs. Mayer in May, 1906, at a time when she was in Massachusetts: "About this hour," he wrote, "you are probably taking leave of beautiful Northampton where you had, of course, a merry time. I have resolutely determined sometime before the coming vacation to spend a day with Hortense. I feel guilty not to have been over there during all of this time. I am a mere spoke and fitted into the wheel which goes round and round all of the time—just a piece of working machinery who, as he looks back, feels that after all his life has been merely humdrum, and nothing more. The barber has just left and before going to the office (just a daily timepiece, doing the same thing about the same moment every day) I want to send the daily message. Just at this stage the telephone workmen have come in. They are only now replacing my private telephone. Having paid the rent in advance for the period ending July 1, I might as well have some use of the phone from 1274 to 1170. Albert is in town, so I have heard, but as yet no word from the boy. This indicates that all goes well at the farm. Last evening Morris and Alfred dined with me—I must have company at my meals and a daily change. We used the auto a little both before and after, just a little, but it was too cold to do much riding in the open car. Bless you. . . ."

In July, 1906, he wrote to Mrs. Mayer a letter containing an amusing account of his outing on July Fourth. An extract from this letter is as follows:

"The day after finds me just as I was the day before. No sore and no burns but with a bit more of automobile experience. We left the Annex shortly after noon, stopping en route to buy some goggles, two flags, two poles with iron pushers at the bottom, and some concussion caps. Boys again! Mr. Davis had laid out a new route. We went south on Cottage Grove to 95th Street, and thence by various roads and through different villages and towns. We got no further than St. John, Indiana, which is some seven miles from Crown Point, and it took us five hours to get to St. John where we left the auto on foot and walked a mile until we ran across a young German farmer who had taken his girl and sister to a picnic. We marooned him and for $2 he drove us to Willowdale. We left the auto and chauffeur on the road, who pulled into the farm about 6.30 after doing some repairing and tinkering every few miles. The car itself seems perfect and since I have been using it, has never given me the least trouble. But yesterday was banner day for tires, both outer and inner. We had only four punctures. We left the chauffeur at the farm, who starts early this morning in the auto. We had the tires doctored up when we left at 9.25 last evening by train."

In another letter in the same year, 1906, he related an accident which happened to him while dining at the Mid-day Club. It is inserted here to show his good

humor and forbearance and is one of many letters written to Mrs. Mayer relating daily episodes. "Your selection goes as to the valet's holiday to begin this coming Monday, and he therefore furnished me a watchful and capable substitute. He does my errands and buys my little necessities and keeps my clothes in trim. He had a good chance yesterday. At noon at the Mid-day Club Mr. Deere, Mr. Potter and Mr. Glenn and myself were at lunch. Our stupid and awkward waiter spilled a pot of finnan haddies over me, and the kitchen scrubbed my coat. I didn't utter a cuss word and took it so 'coolly' that my friends made me out a hero. The boy said he didn't mean to, stammered and apologized, and I simply replied—'Next time mean it, but miss me.' "

However strenuous the days were, Mr. Mayer did not omit his daily letter to Mrs. Mayer when she was absent from Chicago. One written in March, 1909, throws light upon the many things that occupied his mind in his profession. "There are only eight men in my rooms while I write," he wrote, "—five are from Toronto and three from Chicago. They are conferring and arguing and trying to get a compromise, and while all that is going on, I am thinking of and writing to you, my angel. The weather has turned out bright and sunny and I am wondering how soon the fog lifted from the bay and whether you were much delayed. I found your letter under the door as I arose this morning. The conference of yesterday lasted until 6 p.m. and was resumed at 10.30 a.m. today, and

I hope to get through with it by the close of the day. . . ."

In May, 1910, he was in the midst of heavy office and court work but found time no less to send the daily letter to Mrs. Mayer who was in the east at the time. "Before retiring," he wrote, "I want to send you my daily letter. . . . Sunbeam did not dine with me to-night because our old friend H. H. Kohlsaat [of the *Record-Herald*] dined here and was with me until nearly eleven o'clock. We had a good dinner and a good talk. He is a kindly, genial man who prefers to think well rather than ill of the world and its people. Just now the city and a special grand jury are in the midst of 'graft' and bribery investigations. The air just reeks with charges of wrong-doing. We as counsel are in the midst of the fray. We gave the impetus to the investigation by the grand jury by filing a bill for John C. Fetzer against the Western Indiana Railroad and others in which we made serious charges—and the result was the calling of a special grand jury. And then the *Tribune* came out with startling charges of bribery against members of the legislature for selling votes in the Lorimer senatorial election. And thus it goes. I don't *now* feel as though the world (the political part of it in this country) is growing better—I think worse."

In July, 1910, Mrs. Mayer and the daughters were all away. There is a note of loneliness in a letter which he wrote her on the twenty-fifth. "Have just a wee little more of patience and your boy will be with you,"

he said. "I know it is lonesome for you, but far less than for me. You have all of the family with you; I have none. You have everything else that is bright, happy, beautiful and comfortable around you; I have nothing, and yet I am unable to pull myself away from this field of toil, unless, as often said before, I simply stop and quit altogether. I cannot run this great office and myself become an absentee. The work that requires my personal attention and the need of being an example to the others—all make it necessary that I go on for some time at least. . . ."

The time came for the family circle to be broken, in the absence of the daughters in schools distant from Chicago. In a letter of September 11, 1910, he discussed with Mrs. Mayer the contemplated departure of the daughter Madeleine to Smith College. "Your letter just came," he wrote. "I know you are making a sacrifice in letting Madeleine go away from home—so I am—but yours is the greater because you have been around with her more than I have been. Her absence will create a great void. I, like yourself, do love that girl. She is a rare one. I know and have known it. I have not been unobserving though I have not spoken much about my heart and its pangs. But what shall we do? Our own contentment and comfort and peace of heart and mind will be immeasurably better served if we keep the precious pet with us, but her own future, character and development all will benefit more by giving her the Smith education. In such a conflict, the child, whose future covers many

times the years left to you and me, far overshadows our own selves. I do know the hole her absence will make. I feel my loneliness more than you seem to think I do. I speak of it, however, but very little. It is because of that for many years that I have kept myself plunged in work. No matter what the expense and trouble, I do want you to arrange for a continuation of her musical education. I have none—I miss it. She should have all we can give her in connection with general study. I realize more and more what a soul satisfaction and solace music is to those who know and are part of it. I may seem calloused, but I am not, though I am silent at times. . . ."

The daughter Hortense became the wife of Walter A. Hirsch, a prominent lawyer of New York City, for whom Mr. and Mrs. Mayer entertained feelings of admiration and affection. On the occasion of the celebration of their first wedding anniversary, Mr. Mayer wrote this gracious letter to the daughter and son-in-law: "You know how I feel, but to express it in this center of hard and dry work, where there is no sentiment and only real conflict, is impossible. You are both happy. You have made us happier. Your union has been a blessing to all. May your bliss continue and this anniversary be the initial one of many. I want your lives to be Oh, so free from everything that can give pain or trouble. How I would have loved to be with you, but pressure here is such that I can't leave. Blessings on you both. My heart and thoughts are with you."

The son of Mr. and Mrs. Hirsch, Lawrence, who bore the affectionate sobriquet of "Larry," became, upon his advent in this world, the object of Mr. Mayer's passionate devotion. He showered upon this first grandchild a wealth of affection and interest, and as the boy came into understanding and learned to read he was the object of numerous letters from his grandfather, written almost daily and upon a great variety of occasions. Mr. Mayer was accustomed to send his grandson little hurried missives during pauses of the proceedings in the courtroom and from the train when he was traveling, from hotels in different cities, whenever he had a moment's time for writing. Oftentimes he enclosed in these letters humorous clippings from the newspapers; and to receive a message or a letter from the adored grandson was the source of the greatest delight to him. Several letters to the grandson Larry are inserted at this place to show how much Mr. Mayer, out of his busy hours, remembered the boy.

"Paris, April 13, 1913.

"My darling Larry: It is nearly 2 p.m. I have been waiting since 1.30 for a table and during this half hour have come up to my room in order to write to my cute and loving little boy. This wait shows how very crowded the hotel is and will be for months to come. I have just talked to the manager and he told me they could not serve over fifty patrons for lunch for lack of capacity. Yours is a nice postal card. It, like your-

self, makes me feel a joy I cannot describe. I wish I could come back and be with you and grandma and the rest a long, long time. But when I do come, you don't stay long with me, and as you grow older you will find more fun in playing with little mates and on the streets and in the parks than you will with your dry and stiff old papa Lee. I was glad to read your 'danke.' If I had my way I would see to it that now you would begin to learn not only English but also French and German. The best culture, commercial or intellectual, you can get is the complete possession of three modern leading languages. Keep well and make all of us so happy. I love.—Papa Lee."

"Washington, February 14, 1915.

"My darling little Colonel: Before going to breakfast (and it is nearly 11 a.m.) I want to speak a word to my precious pet. The banquet was worth coming for. It was full of wit and gentle humor. Though it played tricks on many, it made a fool of none. These Washington newspaper correspondents are a lot of high-class, broad-minded and sagacious men. (Your mother will tell you what these words mean). I met plenty of old acquaintances. Frank Vanderlip and Ed Harden sat opposite me. The dinner was not over until nearly 1 a.m. I hope that the Gridiron Club will be alive when you are a big man, and that you will sometime be its guest. Here is the badge I wore. A kiss and a hug for you—for Momie and Dadie."

"August 10, 1917.

"My darling boy (Larry), Brief and short letters must answer. But you will be happy if you get plenty of them. I am kept very busy trying to settle the coal troubles and endeavoring to make the coal operators reduce their prices, which are much too high. The weather has turned pleasant. This evening we dine in Glencoe, but I must leave there at eight o'clock so as to be back to meet the Governor of Illinois. I wish I could tell you when we will be able to leave. . . . Love, hugs and kisses for all."

The following letter is one of the many daily notes which Mr. Mayer rushed off on the Twentieth Century. No matter how busy he was, he rarely failed to write a daily note of this kind.

"March 27, 1920.

"My dear, good Larry: You are my darling. I am very sorry you have a cough, and hope you will soon be over it. You would laugh if you saw how I am surrounded by court officers, examiners and witnesses. I am in the midst of cross-examining a witness, and during a few minutes' lull—waiting for some documents—I am sending my pet these few words. I do love you so much and it gives me great pain to learn that you are having a little trouble in your throat. I am still coughing a little. I cannot entirely shake off my cold. I wish I could put my arms around you this very minute. I am going to see you soon. A big kiss and a hug from your own—Pops."

LAWRENCE HIRSCH

"Indian Hill Farm, Manomet, Mass.,
July 26, 1920.

"My dear Little Vagabond: Was it cold at your place last night? It was here. The thermometer fell to forty-five degrees. Yesterday was beautiful, and so it is to-day. I am thinking of you, or I would not be writing this card. There is not a cloud in the sky. The sea is perfectly blue; the birds are singing, the air bracing and everything fine here. But it would be finer if you were here sitting at my side and again listening to my story about the white-headed or bald eagle, who is so very fond of fish. The one I tell about is three feet long, and from tip to tip of the wing, measures seven feet. He sits on top of a big old oak tree where, too lazy to himself fish, he watches the fish-hawk, and when the bird has caught a fish, the eagle takes it from him. My usual love and kisses to all. Regards to Mlle.—Your own, Pops."

"September 3, 1920.

"My precious Larry: How I would have loved to have been with all of you at the Farm! I am, however, under the greatest possible pressure and could not and cannot get away. I am so happy that I have been able to give you and yours a place and chance to enjoy yourselves. I am more happy if all of you have a fine time than if I had it myself. Did you do any reading at Indian Hill? I hope that you learn at least one new thing every day. In this way you will get your mind full of useful and helpful knowledge, all of which will

be nice when you grow up. A heart full of love to you, Mammie, Daddie and Carol and regards to Mlle.—Your, Pops."

"November 21, 1921.

"My own dear Larry: Have bathed, had breakfast and am now ready to talk a little with you. The day is bright and the sun shining. I had planned to go to the football game yesterday between Chicago and Wisconsin but at the last moment changed my mind and remained in the office to do some necessary work. Remember as you grow older that where there is a conflict between work and duty on the one hand, and pleasure on the other, the latter should and must give way if you want to succeed in life. Last evening Grannie and I went to the concert of the Chicago Symphony Orchestra. An eighteen-year-old girl, Erika Morini, was the violin soloist. She is a perfect wonder and a genius. Now that the football season is over, what will be your next sport? What books have you been reading? Are you at all interested in the Disarmament Conference at Washington? Bless you and Carol. Deepest love and hugs and kisses.—Your own Pops."

Mrs. Mayer, in honor of their daughter Madeleine, built the Mayer House as one of the homes of the Helen Day Nursery. On their twenty-fifth wedding anniversary Mr. Mayer presented Mrs. Mayer with a costly piece of jewelry, which she returned, and used its price toward the construction of the building. It

was dedicated to the service of affording a place where children who needed shelter or protection by day or night could be cared for during the working hours of mothers; and to provide temporary refuge in emergency. It was also designed to be an industrial, educational and social center for mothers. It was equipped with storerooms, lockers, bath facilities, play rooms, rest room, large dining room accommodating sixty children and their mothers, domestic science rooms, a laundry open to the neighborhood and where instruction in various domestic departments was to be given. The building is located at Union and Barber Streets, opposite one of the small parks in Chicago, and was designed by the firm of Marshall and Fox, noted architects of that city. On May 13, 1911, it was dedicated and turned over to the uses of the Helen Day Nursery, the day in question being Mother's Day, under a proclamation of the Governor of Illinois and the Mayor of Chicago.

On May 14, 1911, Mr. Mayer, having paid his first visit to the house, wrote to his wife a letter of enthusiasm for her public spirit. "This has been a fine and interesting Sunday," he wrote. "We left the Club House at 3.30 and went direct to your noble, beautiful and thoughtful charity, the Madeleine Mayer House. We arrived there shortly after five o'clock and found the place jammed with visitors. I had never been at that spot before and of course had never seen the 'House' in which your head and heart shine so touchingly. Lulu, H. S. and their associates were doing the

honors as hostesses and guides. And with what happiness and satisfaction, both to themselves and to me, they showed me through the place and every niche of it. What a soulful and kind and well doing and meaning benefactress you are! And such appreciation and glorious comment upon your deed! The opening and everything and everybody in and around the place breathed happiness and goodness. I was keenly touched, so much so, that I feel that if I had known the scope and purpose of your undertaking I would have cheerfully doubled the cost. But you were missed very much. You will however see the fruits of your benefaction when you come back in June. I am prouder than ever of you. The crowd outside, and the many poor but well behaved and clean little ones that poured in and out of the home! I enclose some clippings, and will send more."

These letters are merely samples of his intimate correspondence through a period of many years, to illustrate the workings of his mind and heart toward those who were closest to him. What has been given in this chapter portrays his character as much as fuller quotation could do. As time progressed, his professional labors became even more onerous and proved at the last to be too much for any human constitution. In some letters which he wrote to Mrs. Mayer he commented upon the death of friends and acquaintances at the bar and in other walks of life. These events tinge his reflections with a certain pathos. True to the human heart, he expresses wonder at times about the

meaning of the pageant through which he was passing and in which he was so active a participant. The war, too, drew his mind to sober reflections and it profoundly affected his emotional nature. He wrote many letters along the way, telling of misfortunes into which old friends had fallen and what he had done to relieve distress. He responded to appeals of charity and friendship with great generosity, though wondering at times, as he wrote Mrs. Mayer, if he were not being imposed upon. The death of Quentin Roosevelt affected him profoundly, as did later the death of Roosevelt himself. Of the first, he wrote to Mrs. Mayer in July, 1918: "I am thinking deeply of Roosevelt and the death of his son Quentin. Was there ever a truer and more devoted citizen and patriot. What an epitaph for the boy's tomb! 'Quentin's mother and I are very glad he got to the front and had the chance to render some service to his country, and to show the stuff that was in him before his fate befell him.' Here is an instance where love of country and liberty hold a higher place than parental affection. This statement looms up like a voice from the ancient grave of the Gracchis. He is truly a wonderful man, with all his human faults. I would call him the first citizen of our country. This war opens the windows and we see great and real men. Oh, how I wish we could sit together and chat about so much that is going on!"

The following is supposed to be the last personal letter that Mr. Mayer wrote. It was addressed to his

son-in-law, Mr. Hirsch. It will be seen that he was looking forward to welcoming Mrs. Mayer and their daughters on their return from Europe. The young hopeful referred to in this letter was the beloved Larry.

"Here is a letter I received a few days ago from your young hopeful. If reading it pleases you as much as it did me, we shall both be delighted. He is at least a promising baseball player. Wish I could surprise him on August 26, but on that day I expect to be on the revenue-cutter to welcome the homecomers. A big hug and kiss for darling Carol."

Because of Mr. Mayer's death on the fourteenth of August, Mrs. Mayer hastened her homecoming and arrived in Chicago on the twenty-fourth of August—only to attend the funeral services.

CHAPTER XII

LEVY MAYER HALL, MRS. MAYER'S GIFT TO NORTHWESTERN UNIVERSITY. CONCLUSION

MR. MAYER'S will was executed on the twenty-first day of January, 1913, just before he departed on one of the numerous trips that he made to Europe. He wrote it hurriedly, under the pressing circumstances of embarking and out of a sense of caution that often comes to men of property when they are about to take a journey. The will did not satisfy him, and he contemplated its revision, and often spoke about making another one. He desired to make a study of certain specific charities and he also planned to leave money to Northwestern University for a law school. He was greatly interested in this institution and on several occasions had addressed its students. Perhaps the most notable of these lectures was on February 6, 1905, when he appeared in Booth Hall of the University, speaking on the subject of organizing and advising a corporation. The will which Mr. Mayer made provided a large fund for charity; the specific objects, however, were left to be selected by his trustees. He did not revise his will and himself select the institutions to be remembered. Sometimes the wills of eminent lawyers are found by the courts to be invalid, as in the case of the will of Samuel J. Tilden. Mr. Mayer's will was valid, but it

did not express all that he had intended to put into it. But, as Mrs. Mayer knew these things, and in particular remembered what Mr. Mayer wished to do for Northwestern University, she undertook some little time after Mr. Mayer's death to build and give to the university Levy Mayer Hall, planned as one of the law buildings of the university.

Northwestern University was organized in 1851, five years before Stephen A. Douglas gave land at Thirty-fourth Street and Cottage Grove Avenue for the beginning of the University of Chicago and became one of its incorporators and trustees. Parenthetically, the old University of Chicago founded by Douglas passed over its title to the University of Chicago, founded by Rockefeller; and the new university retained the historic line by adopting the alumni of the old university and placed a bronze bust of Douglas in one of the university buildings. But Northwestern University is equally a Chicago institution. Its charter provided that it should remain located in or near the city of Chicago. Under this charter some of the departments of the university were established in Chicago, and others in Evanston, which in 1851 was a municipality separated from Chicago by vast stretches of unimproved territory, but in the growth of Chicago has become, in a physical sense, part of the metropolis.

In 1891 Northwestern University was one of the largest in the United States, having 200 members in its several faculties and 2,300 students. In 1925 it

MRS. LEVY MAYER

had 680 instructors and 10,136 students. In 1871 Northwestern University had no law school. It was in 1859 that the first law school in the city of Chicago was established as a department of the University of Chicago. In 1873 this department passed under the joint management of Northwestern University and the University of Chicago and assumed the name of "Union College of Law." After a time it ceased to have any connection with the University of Chicago but retained its name. And then in 1891 the name of the school was changed from the "Union College of Law" to "Northwestern University Law School." After this it had a very distinguished corps of instructors and lecturers, among whom were Mr. Justice Harlan of the Supreme Court of the United States, Judge Walter Q. Gresham, Seymour D. Thompson of St. Louis, Melville M. Bigelow of Boston, John N. Jewett, Sigmund Zeisler and others.

Mr. and Mrs. George A. McKinlock, prominent people of Lake Forest and Chicago, in 1920 gave Northwestern University nine acres of ground on the north side of Chicago, lying between Fairbanks Court and the Lakeshore Drive and East Chicago Avenue and an alley situated south of East Superior Street, to be used as a memorial to their son, Lieutenant Alexander McKinlock, who was a brigade intelligence officer in the Soissons Sector in France and was killed while on duty by the fire of German machine guns. These nine acres of land were named "McKinlock Memorial Campus" and Northwestern University set

about to locate upon it various buildings, the gifts of generous citizens of Chicago. One of these gifts was that of Mrs. Montgomery Ward, being $3,000,000 for the erection of a medical-dental center; one of $500,000 from William A. Wieboldt for the completion of the University School of Commerce; one of Mrs. George R. Thorne of $250,000 for the erection of an auditorium; one of Elbert H. Gary of $100,000 for the erection of Gary Law Library; and one of Mrs. Mayer of $500,000 for the erection of a law school building, to be named "Levy Mayer Hall," which was planned to have a bureau of legislative research and to contain a comprehensive record of living law and a laboratory of applied criminal science to coördinate medicine, police and prison practice, psychology and sociology with the law.

When Mrs. Mayer announced her gift in 1923 the following resolutions were adopted by the Northwestern University Law School Alumni Association, engrossed and presented to her:

"Northwestern University Law School Alumni Association at a meeting held at Chicago, Illinois, Wednesday, October Tenth, Nineteen Hundred Twenty-three:

"Whereas, Northwestern University Law School Alumni Association shares with the Bar of Chicago, and the legal profession of the entire country, the deep sense of loss in the sudden termination of the career of one of the most brilliant of America's lawyers,

LEVY MAYER, a leader of the bar, a lover of learning, a patriotic organizer of war service, a man of comprehensive interests and sympathies, and a devoted husband and father; and

"WHEREAS, it is now made known to this Association that, in memory of her husband and his career at the Bar of Chicago, Mrs. Levy Mayer has set aside the sum of Five Hundred Thousand Dollars, as a gift to the University, for the erection of a building to be the home of the Law School on the new Alexander McKinlock Memorial Campus, in Chicago, and to bear the name of

LEVY MAYER HALL

"BE IT RESOLVED:

"FIRST: That Northwestern University Law School Alumni Association places on record its hearty appreciation of this generous gift as a fitting tribute to a great lawyer, and an appropriate agency of perpetual service to that profession and that community in which his career was made, and that this Association proffers its sincerest thanks to the devoted woman who has so wisely chosen this form of honor to her husband's memory.

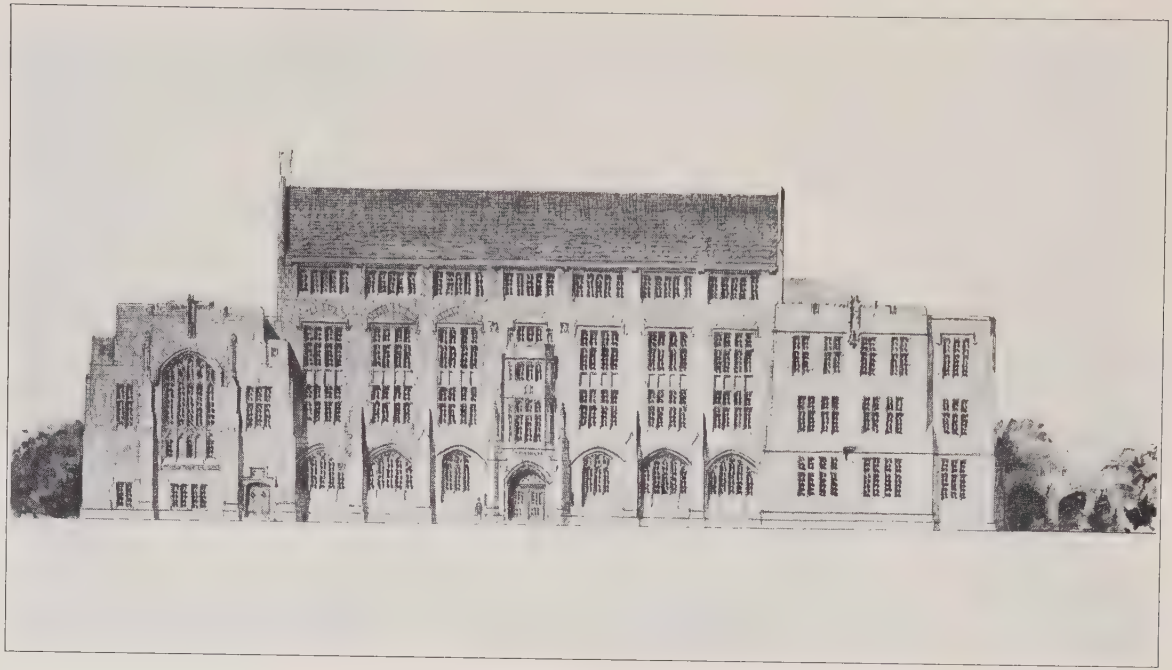
"SECOND: That the Secretary of the Association cause to be made an engrossed copy of this resolution to be given to Mrs. Mayer, and that another copy be placed in the corner-stone of

LEVY MAYER HALL."

On Friday, May 8, 1925, at two o'clock in the afternoon, the ceremonies incident to the breaking of ground were held for the construction of Levy Mayer Hall of Law and Elbert H. Gary Law Library Building on the McKinlock Memorial Campus and at the same time ground was broken for the erection of Wieboldt Hall, of Montgomery Ward Memorial and for George R. Thorne Hall, and Mr. McKinlock dedicated the campus. The ceremonies took place in the presence of the trustees of the university and the faculty, the students and the alumni, Mr. Dever, the Mayor of Chicago, and hundreds of spectators. The exercises were in charge of Brigadier General William MacChesney and there was an invocation, music and a short address by Walter Dill Scott, president of the University.

The ceremony of breaking ground and dedication observed the following formula; Mr. McKinlock said: "In solemn dedication of this field to the service of God and man, through the ministry of high education and in loving memory of my son, Alexander McKinlock, I turn this first sod and break the first ground for this campus on which shall rise the new hopes of Northwestern University, and may the planting here to follow bring forth rich fruitage in the lives of many men through all the years to come. *Quaecumque sunt vera.*"

This was followed by an acceptance on the part of President Scott, words of recognition by Mayor



LEVY MAYER HALL

Dever, and of acceptance by a representative of the alumni of the institution.

Mr. Gary then turned the ground for the Library of Law, and a similar ceremony followed.

In breaking ground for Levy Mayer Hall of Law, Mrs. Mayer said:

"In solemn dedication of this place to the service of God and man, through the ministry of high education and in loving memory of Levy Mayer, I turn the sod and break this ground whereon shall rise the Hall of Law of Northwestern University, and may the building in its strength and beauty be both a symbol and a shrine of truth, which is ever beautiful, and of goodness, which is always strong. *Quaecumque sunt vera.*"

The gift was then accepted by President Scott, by the faculty, by the alumni and by a member of the student body.

Work was speedily begun on these buildings and the cornerstone of Levy Mayer Hall was planned to be laid on June 11, 1926. No one could desire a nobler memorial than this. It is perhaps true that Mr. Mayer's work as a lawyer, a financier, as one of the builders of Chicago, as a protector of its business interests in times of danger, cannot be fully measured until history knows better the meaning of the new industrial era in which he played so great a part. When this period is better understood, the law school memorial may add to its permanent significance as a

monument to one of America's pioneers of a new day yet to be.

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Mr. Mayer was a youth of fourteen at the time of the great Chicago fire, and by then had lived in the city for eight years. Though not an old man at the time of his death, but rather at the apex of his maturity, he was able to recall what Chicago was in the '60's and the giant strides that it took after the fire to rebuild itself from ruin. He knew well the Chicago of the '70's, the '80's and the '90's. He lived through the period of the famous old chop houses, the famous Washington Park Club House, the race tracks, the fine old hospitable gardens of music and beer and continental relaxations. He knew the careers of those virile characters by which Chicago was distinguished in those decades and who gave the city its pristine interest, character and epic charm. He watched the old neighborhoods out on Milwaukee Avenue and in the western part of the city near Harlem, and on the north side, localities of German, Polish and other foreign stocks, gradually yield to the influences of Americanism, while their resorts and places gave way to the innovations which gradually brought Chicago to the size and physical appearance that it has to-day. He saw famous old hotels like the Richelieu, the Victoria, the Wellington and others turned over to the wrecker to make place for the giant skyscrapers or the great hotels of to-day. He was witness to the changes which deprived various parts of the city of their prestige, as

they were taken possession of by business in the changing order of a business development. Before his eyes Michigan Avenue vanished as an aristocratic place of residence; and Prairie Avenue, which for so many years contained the residences of the wealthiest and most famous men of Chicago, became a street of boarding houses, and of printing plants. In a word, while these brief years of his were devoted to law business and to the industrial organization of the city, the state and the nation, Chicago put away, to a large extent, its motley architecture and assumed the uniformity of steel, stone and porcelain.

Who remembers that William F. Coolbaugh, who in the '70's and before was the master financier of Chicago; and who by strange irony of circumstance lost his great prestige almost in the twinkling of an eye; and, being unable, after a desperate struggle, to regain his power and his place, committed suicide at the foot of the monument erected to the memory of Stephen A. Douglas in Douglas Park? At that time, November 14, 1877, Levy Mayer was the assistant librarian in the Law Institute. After this he saw many changes in the financial world, and many bankers go to ruin as Coolbaugh did; but he also lived to help Chicago rise to great financial supremacy after many disasters and much confusion, through consolidation of the Continental and Commercial National Banks, of which consummation he was the master mind.

He knew the old Court House, set in its pleasant square of trees and grass, where the body of Abraham

Lincoln lay in state; and, later, in the '80's, he was an active practitioner in the dreary composite of Greek and Gothic architecture which occupied the whole space of that famous old square. And he saw this imposing and inadequate building wrecked to give way to the structure which stands in the same place to-day. During his time great changes in the courts came to pass. The Justice Courts, the *pal poudre* forums, where all sorts and conditions of people gathered in confusion and in noise to have their claims adjusted and their rights vindicated, were abolished and the Municipal Courts took their places. It was in 1876 that the Appellate Courts of Illinois were created, which were intended to relieve the burdens which were growing too heavy for the Supreme Court, and which imposed upon that tribunal the consideration of lesser appeals; and in Chicago he saw one Appellate Court grow to three, in order to take care of the increasing litigation, and in the trial courts of the Circuit and Superior Courts, he saw the population and business needs of the city call for the increase of judges until there were twenty-eight judges of the Superior Court and twenty judges of the Circuit Court and thirty-eight judges of the Municipal Court, besides various judges holding the County Court, the United States District Court and the United States Circuit Court of Appeals. During the period of his career the Probate Court, with its various branches, was established. And in the administration of the law and in its practice he saw the days of hurly-burly, the days of eloquence, the

days of power of the jury, the days of eccentric characters upon the bench, give way to order, system and routine as the correspondents of stone and steel and porcelain.

Imagine any morning in this city of nearly three million people, as the time approaches when the courts are convening for business! Cases are to be called for trial, juries are to be empaneled, arguments are to be made on matters of law, motions are to be heard, a vast throng of clerks assisting the six thousand lawyers who are managing the law business of the city, and the lawyers as well, are streaming to the Court House, to Michigan Avenue where the Appellate Court sits, and to the Federal Building. Here is the exhausting labor of watching and waiting and interrogating and arguing; and the great strain of anxiety and fear lest something may be overlooked, lest some event depended upon may not come to pass; some person relied upon may fail; some judge may change his mind; some juror may be corruptly influenced or stupidly controlled. Where great business interests are involved, such as Mr. Mayer had under his care, constant apprehension must exist for fear some part of the external machinery may go wrong. The lawyer himself may be ever so well prepared and ever so skillful. There is the chance that some of the external machinery with which he has to deal may fail to work and that serious consequences may ensue, requiring him to pluck up his courage and his strength for a still greater endeavor.

It was in this life of responsibility and anxiety, and amid circumstances like these described which constantly beat upon the nervous organization, that Mr. Mayer lived and wrought. Such things being considered, he lived many more years than the mere mathematical term of his life. In thought, in experience, in labor wrought and in tasks endured, he was twice as old as the mere number of his years. There are also in a lawyer's life disappointments which cannot be quieted or argued away and which produce after results that cannot be reconciled.

Joined with his legal genius was a business capacity of extraordinary keenness and he therefore fitted into the new industrial era in which he was a part and for which he did so much. In the days that preceded him, when the law was a profession, as it is sometimes phrased, the lawyer might have been a business man, so far as the primitive business conditions required him to be; but he would have been wholly unfitted for the days in which Levy Mayer labored and achieved. The law is business for that matter. It is the laying-down and the interpretation of the rules by which business is conducted. But, as the old days of the shopkeeper and the pony express and the early steamboat merged into the days of the larger merchant, the telegraph and the fast train, the rules had to be applied to a very much more complex condition; and as time went on and the ocean was covered with fast boats and the continent with limited trains, and as the aeroplane and the radio came, signifying the conquest of

the earth and the air, a business situation arose which required a powerful man like Levy Mayer to do its multiform work. He was unquestionably as good, or better, a business man as any member of the Illinois Manufacturers' Association, or any of the men who were organizing sugar, spirits, sisal or banks; and at the same time he had mastered all the principles of law from the beginning up, which had any application to this complexity or could be used in its protection and advancement. To be a great business man in such an era, and a great lawyer, too, is to accomplish much.

It is unquestionably true that, with whatever grace he submitted to the decision in the Eighteenth Amendment and prohibition cases, and with whatever philosophy he attempted to regard the paternalism which gradually encroached upon national life and upon that industrial concentration with which he had so much to do, he was, nevertheless, deeply concerned about the future of the country. With the various programs which were associated with the name of Bryan, he had no patience whatever. He was opposed to the primary system of nominating, believing the convention system as the engine of representative government to be better than the primary, necessarily the instrumentality of a mass democracy. Similarly, the election of senators by direct vote of the people offended his sense of logic, as he saw in that system the possibility of a lowering of senatorial representation; while, on the other hand, the political

bosses against whom it was aimed were only pushed one peg farther back in the matter of their control. So did the Income Tax, with its bungling and awkward provisions, annoy his ideals of what a rational law should be. The irresponsible impulse in the country to regulate everything also aroused within him that feeling for individual liberty and non-interference with business which he thought were cardinal principles of the democracy in which he believed and which he saw transformed by the rising influence of Bryan and Roosevelt.

Mr. Mayer was as fit an exponent of his time as Lincoln or any other historic character who emerged out of the hands of the world-spirit and, consciously or unconsciously, did the bidding of the age. He endured, not because he was a stoic, but he found delight or relief, as the case might be, in labor. He was not a skeptic, both because of the nature of his mind, which was schooled for activity, and because he was too engrossed with practical affairs to falsify the scene with which he was surrounded. He was not a mystic, because practical life too much occupied the field of his vision. He had a forensic bravery of a high order and capacity to enjoy a life that he built up for himself in his work among the associations which he permitted himself to have. Though he had a deep-seated dislike of socialism, and an abhorrence of the "dreadful dreams of populism," he labored through these years regretting that many tenets of those economic philosophies were wrought into law and accepted by

the courts. He was hopeful, perhaps, that these confusing revolutions, having no rightful place in the fundamental law as they never had in the common law, would be gradually worked out of such temporized jurisprudence or assimilated upon a more rational basis. At least it can be said that he lived through a period of education and orderly change of law, and not change by revolution. His name stands for professional integrity, loyalty to his country, generosity to the weak and devotion to his friends and family. Chiefly, however, in the historical sense, he was the exponent of that system and organization and efficiency as a lawyer which was called for by big business and which more than any other lawyer of his time, he brought to its service. He was at once a product of big business and its legal master. In the march of events some one will build upon his career and produce something else, as he built upon the wisdom and careers of those who preceded him. As we come to know life and arrive at some sort of a comprehension of history, and understand the tests of truth; and as we learn to weigh probabilities, and assay appraisals, we have no doubt of the quality of a man whose intimates and associates called just and generous, whose fellow-citizens praised for his public spirit, whose death was mourned by jurists and lawyers, and whose family of wife and children, brothers and sisters, took in his death the hurt of irreparable loss. These are the proofs that Levy Mayer was a great lawyer and a good man.

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